A collection

App. F. IX-4

Previous References

9 T. 35-33(1-4)
Mysore 665-21(1-4) Accretion.

Later References

1935. (Secret)

File No. 61-35

Serial Nos. 1

125

General and Revenue Secretariat.

Approved

Serial Nos. one

Manuscript.

~~**Part B** for~~ January 1936

SUBJECT.

Amendment of the Mysore Income Tax Act.

No 44768/36-1-36

Orders will be passed after the Mysore Income Tax Act is amended.

5/1/36

I agree with the learned Commissioner of Income Tax that the Judgment of the High Court in Civil Petition No. 63/33-34 may have far-reaching consequences. According to section 10 (4) of the Regulation, in computing the profits or gains of a business, deduction has to be allowed of the amount of profits or gains due to transactions in British India, so that Mysore cannot now tax such profits or gains. According to the present ruling of the High Court any losses sustained in British India in such business will have to be set off against gains in Mysore so that while the profits there cannot be taxed by Mysore, the losses there will have to be taken into consideration in computing profits. This would surely be disadvantageous to Mysore. No doubt in section 10, while provision is made for the deduction of profits or gains in British India, no provision is expressly made with respect to the losses there, and this omission is construed in favour of the subject, as fiscal enactments should always be construed strictly, and in favour of the subject.

The scheme of the Regulation, however, seems to be to treat Mysore as a unit and tax the profits or gains accruing or arising or received in Mysore.

But for section 10 (4), the position would be this, that if profits were made in British India, they would be liable to taxation there while it would also be taxable in Mysore if they were received here, and thus such profits would be liable to double taxation by

NOTE—Contn. Sheet.

By the reciprocal arrangement between the two Governments, this double taxation has been avoided and section 10 (4) gives effect to this arrangement. Under these circumstances, it is difficult to say that the object of the legislature was to set-off losses in British India against gains in Mysore in order to compute the taxable income.

The principle now enunciated by the High Court may be applied with respect to business concerns having head-quarters in British India and Branches in Mysore and they may claim to set-off gains here against losses in British India. This might considerably prejudice Mysore financially. If the object of Government is not to take into consideration the losses in British India in computing the profits for taxation in Mysore, some steps will have to be taken in the matter, immediately.

The Commissioner suggests that the question may be re-opened in the High Court by means of a Review. That step does not seem to be desirable as a review is not competent as laid down in 30 Mysore Chief Court Reports, page 221. Moreover as all the points mentioned by the Commissioner were all urged during the hearing of the case, it is hardly likely that the High Court will permit a re-hearing of the case on the same points.

The next suggestion made by the Commissioner is that under section 59, proper rules might be framed in order to get over this difficulty. The High Court decision proceeds on a construction of

section 10

section 10 of the Regulation, and I do not think any rule framed under section 59 by Government could alter the effect of section 10, and any such rule would, I think, be ultra vires.

The only way in which the situation could be got over is by amending section 10 by providing in effect that such losses as those in question shall not be set off against profits or gains in Mysore.

M. Raghavan
Government Advocate.
15.8.1935.

File No. of 193 .

General and Revenue
Secretariat

Serial No.

I agree with the Government Advocate that a Review of the High Court Judgment is neither admissible nor likely to be successful and that a modification in the existing rules will not achieve the object in view. So, the only remedy open to us is to amend the Law. As it is an urgent matter, action has to be taken at once without waiting for the Legislative Council Session in December. Perhaps, we may have to issue an Ordinance in the matter.

As regards Sir Charles Todhunter's letter of the 20th August 1935 to the Dewan, the suggestion made therein is based more or less on general principles. But what we are concerned with in this case is the existing law in the Income-tax Regulation, which is based on the Income-tax Law in British India. Moreover, there are certain existing arrangement as regards the double taxation between British India and Mysore which have been sanctioned by the Government of India. It may not therefore be possible to substitute different principles for the existing legislation.

A draft of the amendment on the lines suggested by the Income-tax Commissioner may be put up for consideration in consultation with the Law Department. The question as to in what form it has to be issued may be decided afterwards. The issue of the amendment may be done after the A.I. Congress meeting -

24/9

NOTE—Contn. Sheet.

WD 01536—GPB—7,500—5-4-34

88
2519

S.T. on Mysore Bank 2120 of 35

File No. 61 of 193 S. | General and Revenue Secretariat

Draft subd. - May be refd to Law Deptt as ordered on previous page.

Gen. Secy) 26/9/35

FINANCIAL 26 SEP. 1935 GENL. & REV. SECTT.

26 SEP. 1935 764

Yes 27/9

Asst Secy; Law with Compliments) 30/9/35

Sec. 10(4) of our Income tax Regn has no parallel in the British Indian Income tax Reputation Act. There relief from double taxation is given by means of a notification issued under sec 60. It is not clear why a similar procedure should not have been adopted here also. This would have avoided an argument being based on sec 10(4) as is now done in the Draft of the High Court.

The scheme of sec 10 of the Income tax Regn is that the assessee has to pay income tax in respect of business" on the profits or gains made by him in such business and the only deductions he is allowed to make are the deductions enumerated

Law

one

1/10

up to date copy of Br. Indian Act (as amended) is not available in the Law Dept. Kindly send us one copy of it as soon as available here.

TSD. 7/10 R+S, please put up 8/10 Law.

Serial No.

in the 9 clauses mentioned in Subsec (2) of Sec 10. ~~The~~ It is doubtful if rent or repair charges paid in respect of premises outside Mysore can be deductible under this section. In a decision of the Full Bench of the Madras High Court reported in 1928 Mad 487, it has been pointed that "business" under this section is "business in British India", the income of which alone is liable to be taxed. The loss incurred outside will be due to expenditure incurred in excess of receipts there and unless therefore the expenditure is such that it comes under any of the 9 clauses of Sec 10 (2), it does not become deductible. In this view, I submit that apart from Sec 10 (4), the loss in the Cotton Spg Branch is not deductible out of the profits earned in Mysore - This seems to be the basis of the principle followed without demur in British India - Otherwise a similar point would have arisen & decided long ago or otherwise, the law would have been amended there.

Anyway, since there has been this decision of ~~the~~ one High Court, the

WD 03594—GPB—30,000—13-7-35

2120 2120

7)

File No. 61 of 1935. | General and Revenue Secretariat

income tax Regulation has to be amended. I think the best way is to specifically say that losses incurred on account of business done outside Mysore should not be taken in the computation of profits under Sec. 10. The draft Amendment proposed seems to be all right, subject to further scrutiny in the legislative section.

Gen Secy

DOL 8/10

Under Secy (Legis) to see

Kindly note the 17.10

C 17/10/35

The file introducing Mysore Income Tax Regulation of 1923 may be put up.

C 17/10/35

Send multi-legis file 48-21-35-1 to

18/10

GENERAL BRANCH 178 9 OCT 1935

The recent decision of the High Court appears to be applicable only to the case of a firm or a company which has its headquarters in Mysore and branches outside and not vice versa, i.e., to the case of a firm or company which has its headquarters outside and branches in Mysore. The main argument of the learned Chief Justice in deciding that losses incurred by branches outside should be taken into account in assessing the income of the head office is that it is the head office that directs and controls all busines and it is in that office that the profits of the whole concern are calculated and distributed in the shape of dividends to the shareholders. The following passages in the judgment are pertinent in this connection:-

> " The Bank of Mysore as above mentioned has its headquarters in Mysore. Its business is directed and controlled by the head office in the Mysore State. It is in that office that the profits of the whole concern are collected, and from that office they are distributed in the shape of dividends to the shareholders. Wherever the profits are earned, they are the profits of the bank which has its head office in the Mysore State. And only because there is that provision (section 10(4)), the profits made by the branch in British India, even though received at the head office in the Mysore State and distributed from that office in the shape of dividends to the shareholders, are exempted from Mysore taxation. ..... If losses are incurred by any branch of the bank wherever situated, the bank as a whole has to meet these losses. Those losses have to be adjusted in the head office of the bank against profits made elsewhere, and if they are so great as to absorb the whole profits made elsewhere in any particular year, then they must be met from the reserve fund of the bank as a whole or in the last resort from further contributions to be made by the shareholders. Wherever the losses occur, they are the losses of the bank which, as I have said, is directed, controlled and administered in the Mysore State.

NOTE—Contn. Sheet.

The above arguments would not be applicable to the case where the assessee is a branch in Mysore and the head office is outside Mysore. The losses incurred by the head office, or other branches, outside Mysore cannot obviously enter into the computation of the income of the assessee which is a branch in Mysore. So, the fear of the Income-Tax Commissioner that firms like Volkart Bros., Burma Shell Co., etc., which have branches in Mysore will dump their losses incurred outside on the Mysore branches does not appear to be based on good grounds. Except the Mysore Bank and a few others, there do not appear to be many concerns which have their headquarters in Mysore and branches outside. The Commissioner of Income-tax may go on assessing Mysore branches of firms abroad without giving allowance for losses incurred as was the practice hitherto.

It is, however, not desirable or expedient to leave matters to the interpretation of a judgment or the distinguishing features arguable therefrom. An amendment of the Income-Tax Regulation will be safer. Neither in the British Indian Act of 1918 nor in the Amending British Indian Act of 1922, was there any subsection corresponding to subsection (4) of section 10 of the Mysore Income-tax Regulation. Somehow, when the Income-tax law was first introduced in Mysore in 1920, this provision got into the Regulation as subsection (3) of section 9 of the

1 This was missed probably because Report had entered into reciprocal arrangements with British India when the Bill was drafted here.
Flag Y

the Regulation of 1920.[1] When the amending was taken up in 1923, the Income-tax Commissioner pointed out that this subsection may be deleted as it was not existing in the British Indian Act of 1922. But, somehow, it was thought that the provision may be continued in the amending legislation also, as a ~~reciprocal~~ similar provision on a reciprocal basis was made by rules in British India. Under the British Indian Act, business has been construed as meaning business in British India. Consequently, losses incurred in branches outside are not allowed to be deducted either under section 10 or under section 24. Profits in branches would be assessable as income when they are received in the head office for the purpose of declaration of dividend In respect of such of the States with which the Government of India have entered into reciprocal arrangements for relief from double income-tax, the Government of India have under section 60 granted exemption from British Indian tax in respect of the income of the branches outside which have been taxed by the States concerned. It must be observed that this relief is granted by the Government of India in their discretionary power under section 60 and not as a matter of right.

In consequence of the inclusion in our Regulation of the provisions for giving relief from double income-tax, it has been possible to raise a special plea as in the judgment of the High Court:

" Section 10 (4) of the Regulation excludes from taxation in this State profits made in a

NOTE—Contn. Sheet.

a branch in British India such as the branch of the bank with which we are dealing. But there is not a word in the Regulation to exclude losses suffered from British India or anywhere else from or profits made elsewhere in order to ascertain what is the net profit or income of a business. As a fiscal statute must be interpreted strictly against the State, that might be considered alone to settle the question ".

In the absence of a provision similar to section 10(4), it will not be possible to raise such a special plea, and consequently it appears probable that such contentions have not been raised under the British Indian Act. The omission to adopt the British Indian Act in toto while legislating here and attempting to make an amendment (which no doubt was intended to give effect to a reciprocal arrangement) have led to inconvenient consequences in the interpretation of the law.

The deletion of section 10(4) by itself is not likely to lead to a different interpretation of the law on the lines of the interpretation under the British Indian Act. There is an observation in the recent judgment of the High Court which is somewhat specific. It is this:

" In the absence of any words in the Regulation providing that some losses should be disregarded, all losses must be taken into account"

In view of this dictum, a specific provision has to be inserted in the Regulation to the effect that losses incurred outside must be disregarded in computing the income from business of a firm or a company in the State.

The amendment that is to be made would not come

12.12

fit suitable in as a proviso to ~~some~~ section 10(4). The existing section 10(4) may be deleted to bring it into conformity with section 10 in British India so as to preclude the possibility of different interpretations and a specific provision, as indicated in the dictum of the High Court above, may be added. Consequently in place of subsection 4 of section 10, the following may be substituted:-

> " In computing the profits or gains of a business which has its headquarters in Mysore but has branches also outside Mysore or which is carried partly in Mysore and partly ~~in~~ outside Mysore, no deduction shall be allowed of the amount of loss appearing to the assessing officer to be due to transactions outside Mysore".

This will involve profits or gains outside being assessed when they are received in Mysore and this is the law in British India also under section 4. For giving relief from the double imposition, we may grant exemptions under section 60 by rules, as has been done in British India, not only in respect of profits accruing in British India to which present subsection 10(4) is restricted, but also in respect of profits accruing in any other State which has entered into reciprocal arrangements with us. The amendment suggested above is also general & would be applicable to losses arising in British India or elsewhere.

Gen Sec

Ce 24/10/35

20 Oct. 1935
548

NOTE—Contn. Sheet.

(137)

File No. 61 of 193 . | General and Revenue Secretariat

Will Asstt Secy Law please make a statement of the ~~alternatives~~ courses suggd by the G.A - Minister - and the Secretary and bring this for orders today.

MW
29/10.

Mr T & W
Please get a comparative statement typed
MW
29/10

Comparative statement put up
T&D
29/10.

Submitted to the Member with reference to order dated 24/9/35 above.

The suggestions made by the Government Advocate, the Law section, and by the Income tax Secy (Legislation) are shown side by side in the statement put up.

What is required is to remove the phraseology that has led to the present decision of the High Court, make it clear that losses suffered elsewhere shall not be allowed for and

(Ref 14)

The course suggested by the Government Advocate.	The proposed amendment agreed to.	Amendment proposed by the Under Secretary.
The only way in which the situation could be got over is by amending Section 10 by providing in effect that such losses as those in question shall not be set off against profits or gains in Mysore.	The following clause shall be added at the end of section 10 sub-section (4). Substitute semi-colon for full-stop after "British India" and add "provided that losses appearing to the assessing officer to be due to the transactions in British India shall not be allowed to be set off against the profits or gains accrued or earned in Mysore"	In place of sub-section 4 of Section 10 substitute "In computing the profits or gains of a business which has its headquarters in Mysore but has branches also outside Mysore or which is carried on partly in Mysore and partly outside Mysore, no deduction shall be allowed ~~of~~ the amount of loss appearing to the assessing officer to be due to transactions ~~within~~ outside Mysore. (together with a rule under Sec 60 giving relief from double taxation, this rule takes the place of Sec 10(4) as now standing. JMS 1/11

at the same time provide the relief from double taxation now in force

The suggestion made by the Under Secy Legislation is perhaps most suitable for these purposes. Clause (4) proviso has given rise to the present decision It may be removed. The Court has assumed that allowance for loss shall not having been expressly ruled out in the statute it has to be given to assessee: as a fiscal law has to be interpreted in favour of the subject Expressly ruling out as in the clause proposed by the Under Secy will meet this difficulty. The relief from double taxation now in force can be provided for by a rule under sec 60 in the same manner as in British India

This course may therefore be approved

After approval to the course is recorded the papers will be referred to the Legislative Secy for further action

First Dr

OFFICE OF THE HIGH COMMR. FOR INDIA
2 - NOV 1935
W 2961

The suggestion made by the Under Secretary will not quite meet the situation. If Sub Section 4 of Section 10 is deleted and only losses are referred in the proposed new clause as suggested, it will lead to the converse of the position which we are now trying to avoid and it may not be possible to exclude profits arising in British India. The High Court might then say that there is no special provision to exclude profits made in British India. It seems to me that either Section 10(4) may be deleted and provision made under the rules for both profits and losses, or the section itself may be so amended as to provide for profits and losses.

As pointed out by the Under Secretary, some reference to losses in the Regulation is necessary to meet the High Court's point of view. I therefore think that the best course is to amend sub-section 4 of section 10 by adding a clause to exclude losses arising in British India, from the calculation of profits in Mysore. The following may be added at the end of sub section 4 of section 10:-

"and no deduction shall be allowed of the ~~amount of loss appearing to such officer to be~~ due to such transactions".

As regards the form of legislation, I think that as a meeting of the Legislative Council comes off shortly, it is better to pass the required legislation at the Legislative Council in one sitting. Even if an Ordinance is issued, it will have to be passed into law through the Legislative Council within six

47

Serial No.

months. This Bill may be brought up straight in the Legislative Council under Section 9(2) of the Representative Assembly Regulation as an emergency measure.

Please submit to the Second Member before taking further action.

28 NOV. 1935
No. 3672

OFFICE OF THE
SECOND MEMBER OF GOVERNMENT
28 NOV. 1935
No. 4124

Jon
28/11

Rec
27/11

Second Member)

Rec
27/11

I agree
Rec
29/11/35

Davran)

29/11/35

MS
29-11-35

Rec
30/11

This amending Bill will be published under Rule 8 of the L.C. Rules. As 15 clear days are necessary, this will be published today as a Gazette Extraordinary (or Supplement) pending approval of His Highness.

WD 03594—GPB—30,000—18-7-35

1486) 11

File No. Legis 61 of 1935

General and Revenue Secretariat

Draft Bill & Statement of Objects & Reasons are submitted for approval.

2nd Member)

Ce
30/11/35

DEWAN'S OFFICE
30 NOV. 1935
No. 3579

The 2nd Member said that this may be submitted to H. H. & the Bill published in next week's Gazette.

D.F.N. sd.

Dw
30/11

OFFICE OF THE
SECOND MEMBER OF GOVT.
30 NOV. 1935
NO. 4229

Seed Member)
F.N. Signed by Member.

CBB.
30/11

Final Note by the Second Member of Council.

19
19

Subject.—

Amendment of the Incometax Regulation.

I beg to submit herewith papers relating to an amendment of the Mysore Incometax Regulation rendered necessary by a recen decision of the High Court of Mysore.

Under Section 10(4) of the Regulation, as it stands at present, profits earned outside the State by any business which has officesboth in the State and outside, will not be assessed t incometax in the State. Conversely it has been the practice not to allow for losses incurred by such business outside the State though this is not specifically mentioned. The decision of the High Court, however, is that as losses have not been specially ruled out in the Section as profits have been, they should be allowed for. This position is anomalous. It is moreover inconsistent with the practice hitherto followed in the State and the practice followed in British India with reference to concerns which have branches in British India and in the State. It has, therefore, become necessary to amend the Incometax Regulation so as to rule out specifically losses incurred by such concerns outside the State in the same manner as profits so earned are ruled out. It is proposed therefore to make an addition to clause 4 o Section 10 of the Regulation as follows:-

"and no deduction shall be allowed of the amount of loss appearing to such officer to be due to the transactions outside Mysore".

The draft of the amendment proposed and the statement of objects and reasons are placed in the file. This amendment of the Regulation will be placed before the Legislative Council at its meeting commencing on the 16th December 1935 and it is intended to have it passed at one sitting.

Gracious

20

Gracious approval of His Highness is solicited to the amendment and the procedure proposed to be followed.

M. A. Rama Rau

MEMBER OF COUNCIL.

Bangalore,
30th November 1935.

21

Submitted to His Highness.

I submit herewith a Final Note by the Second *Member of Council on the subject of* the Amendment of the Incometax Regulation, *for His Highness' gracious approval.*

Mirza M. Ismail
Dewan.

Bangalore,
30th November 1935.

22

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Amendment of the Income-tax Regulation.

C. Secy
MJ
5-12-35

287

Order.

~~KRW~~
3/12/35

Dm
5/12

300 43

(23)

General and Revenue
Secretariat

SUBJECT:- Amendment of the Income-tax Regulation

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Head-quarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*Vide Rules* 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

~~Through~~ the Secretary to Government,

General ..... Department. 6/12

FIRST MEMBER OF COUNCIL.

4388
6/12

SECOND MEMBER OF COUNCIL. 6/12/35

NOTE.—Contn. sheet.

Bill further to amend the Income Tax Regn

2L 24

General and Revenue Secretariat | File No. 61 of 1935. | [App. F. III—2

Serial No.

The Bill has been published under rule 8 of the L.C. Rules of business in the Gazette of 8.12.35 and a copy is herewith put up.

Having regard to the urgency of the measure as stated at the end of page 6 of the notes the following motions are suggested for being included in the agenda for the meeting of the Legislative Council:-

S.O. 39 [illegible] Standing orders of business be suspended

(1) Motion that the Bill published under Rule 8 of the rules of business be read in Council

(2) Motion that the rules of business be suspended and the Bill taken into Consideration at once without reference to a Select Committee

(3) Motion that the Bill be passed.

Mover: The Second Member of Council

Seconder: The General Secy to Govt.

Done 7/12

S.O. 39 requires that a Bill should

NOTE.—Contn. Sheet.

WD 03594—GPB—30,000—18-7-35

25

Bill to amend the Income Tax Regulations

25

File No. Legis 216/1 of 1935

General and Revenue Secretariat

be published in the Gazette 15 clear days before its introduced. This Bill was published only on 5th inst. Consequently it is indicated in the first motion that "S.O. 39 be suspended". It is not quite necessary to make mention of it in the motion for inclusion in the agenda. A formal motion to get the consent of the House to suspend S.O. 39 may be made when this Bill comes up before the House.

DEWAN'S OFFICE 24 DEC. 1935 No.....

GENERAL SECRETARIAT 7 DEC. 1935 257

OFFICE OF THE SECOND MEMBER OF COUNCIL 7 DEC. 1935 No. 4429

Legislative / 2nd Member) DMM 7.12.35. C 7/12/35

DMM 8/12/35

Legislative Office) C 8/12

Noted and put to the Prot. B.C. a.c.)

11/12/35 C

Sd/-

The Bill was read in Council, considered and was passed at ~~D.F.~~ the meeting held on 18-12-1935. D.F.N. is put up

20/12 2nd Member) C 20/12

F.N. Signed by Member: DMM 20/12/35

C 23/12

Dewan)

OFFICE OF THE SECOND MEMBER OF COUNCIL 23 DEC. 1935 No. 4825

DEWAN'S OFFICE 24 DEC. 1935 No. 4160

Final Note by the Second Member of Council. 26

Subject.—

Amendment of the Incometax Regulation.

Gracious approval of His Highness was accorded on the 3rd December 1935 to introduce direct in the Legislative Council a bill to amend Section 10(4) of the Mysore Incometax Regulation so as to place on a statutory basis the existing practice of excluding losses incurred by a business concern in its transactions outside the State in computing the income assessable to Mysore Incometax.

The bill was, after previous publication, placed before the Legislative Council at the meeting held on the 17th December 1935 and it was considered and passed by that body at the same sitting.

I now solicit the gracious sanction of His Highness to promulgate the bill as law.

N. M. Srinivasa Rau
MEMBER OF COUNCIL.

Bangalore,
23rd December 1935.

7

Submitted to His Highness.

I submit herewith a Final Note by the Second *Member of Council on the ~~subject of~~* Amendment of the Incometax Regulation

for His Highness' gracious approval.

Mirza M. Ismail
Dewan.

Bangalore,
24th December 1935.

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Promulgation as law of the Bill to amend the Mysore Income-tax Regulation.

C Secy
MJ
26.12.35

Order.

~~KRW~~

27/12/35

338

2120/35

354 29

General and Revenue
Secretariat

SUBJECT:- Promulgation as Law of the Bill to amend the Nayar Income tax Regulation.

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Head-quarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*) (*Vide Rules* 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

28.12.35
Chief Secretary to Government.

Through the Secretary to Government,

..... Department.

FIRST MEMBER OF COUNCIL. (on leave)

5043
28/12

SECOND MEMBER OF COUNCIL. 29/12/35

Prom.
30/12
4/1/-

NOTE.—Contn. sheet.

XI - 1935

30

General and Revenue Secretariat | File No. 61 of 1935. | [App. F. III—2

Serial No.	
	Subj. visits & programs & proceedings of the Regn
	31/V
1	G.O. no 4476 dt 10/6/36 ordering the publication of the Regn. as Regn.

NOTE—Contn. Sheet.

WD 0434—GPB—15,000—12-10-33

9-T. 4-35--1.

BVS

In reply please refer to
No. 26

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 13th July 1935.

FINANCIAL & TRADE DEPT.
15 JULY 1935
243
GEN. & REV. SECTT.

From

The Government Advocate
in Mysore, BANGALORE.

To

The ~~Secretary~~ Secretary to the Govt.
of H. H. The Maharaja of Mysore,
Development Department, BANGALORE.

Sir,

With reference to Government Order No.Fl.274-6/I.T. 35-33-2 dated the 6th/10th July 1934, I have the honor to - state that Civil Petition No.63 of 1933-34/C.P.No.21 of 34-35 on the file of the High Court of Mysore, (The Bank of Mysore, Ltd., VS. The Commissioner of Income-Tax in Mysore) came on for final disposal on the 9th and 11th July 1935 and after hearing arguments orders were passed answering the reference in the affirmative.

2. A copy of the Order has been applied for and the same will be sent to you as soon as it is received in this office.

Submitted for perusal with pp
17/7

Please submit with copy of the order after receipt.
17/7/35.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

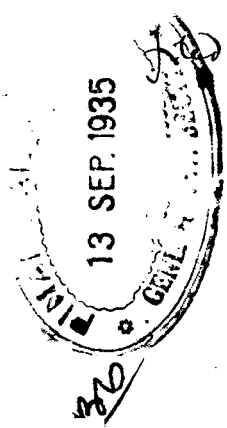
CSN.

This may be returned to the
II Mr's office from where it was obtained
in Connection with the Govt. Ad's
bill.

TSD
12/9 not necessary

pre
12/9

The Asst Sec wants this to be



To Fin & Bus (via) to kindly
retain this original and send
a c/s which is said to be
available.

TSD
13/9 There is no copy
here - the D.O.S.
of 16 & 17-8-35 that wages
in the framework are put
B.W. - May you return it to us
2-3/4 for our use.

has been filed registered in
Dublin. It seems best if it
filed in each Branch no. Spare
C/S is said to be available in
each Br.

TSD
19/5

MPK Reilly

Dublin Br
W.C.

BDD

9-T. 4-35-2

816

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to
No. 113

Bangalore, 31st July 1935.

1520

FINANCIAL BR
- 3 AUG. 1935
543
REV. SECTT.

From

The Government Advocate
in Mysore, BANGALORE.

GENERAL BRANCH
1 AUG. 1935

To

The Secretary to the Govt. of
H. H. The Maharaja of Mysore,
Development Department, BANGALORE.

Sir,

In continuation of this office letter No.36 dated the 13th July 1935, I have the honor to forward herewith, for the information of Government, a copy of the Order passed in Civil Petition No. 63 of 1933-34/Civil Petition No.21 of 1934-35 on the file of the High Court of Mysore, (The Bank of Mysore, Ltd., VS. The Commissioner of Income-Tax in Mysore).

I have the honor to be,
Sir,
Your most obedient servant,

GENERAL BRANCH
5 AUG. 1935
920

Government Advocate.

CSN.

No 303/6B 3

29.7.1935

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Thursday, the 11th day of July 1935.

Present

Mr. H. D. C. Reilly, Chief Justice,

and

Mr. Justice A. S. R. Chari.

--

Civil Petition No.21 of 1934-35 presented on 7-11-1934 under Section 66(3) of the Mysore Income-tax Regulation by Mr.B.Vasudevamurth Advocate for the Assessee - Bank of Mysore, Ltd., Bangalore, praying that the Commissioner of Income-tax in Mysore may be called upon to state the case and refer to this Court for decision two more questions which had been formulated before him in addition to the two already referred by him to this Court in Civil Petition No.63 of 1933-34.

O R D E R.

This petition is dismissed as unnecessary in view of the decision in Civil Petition No.63 of 1933-34. There will be no order as to costs.

Sd/- H.D.C. Reilly,
CHIEF JUSTICE.

Sd/- A.S.R. Chari,
JUDGE.

"Copy"

Deputy REGISTRAR.

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No 303/6B 4

D/ 29.7.1935

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IN THE HIGH COURT OF MYSORE AT BANGALORE.

Thursday, the 11th day of July 1935.

PRESENT

MR.H.D.C. REILLY, CHIEF JUSTICE

And

MR. JUSTICE A.S.R. CHARI.

CIVIL PETITION No. 63 of 1933-34

In the matter of a reference under Section 66(2) of the Mysore Income-tax Regulation of 1923, made by the Commissioner of Income-tax in Mysore and received with his letter No.C. 288/33-34 dated 8-5-1934 forwarding for the decision of this Court a statement of the case relating to the income-tax due from the Bank of Mysore Ltd Bangalore for the year 1932-33.

Heard:-

Mr.B.Vasudevamurthi, Advocate for the ASSESSEE.

Mr.A.R.Nageswara Iyer, Government Advocate for Government

(Commissioner of Income-tax)

ORDER.

5

C.R.No.63/33-34.

O R D E R.

THE CHIEF JUSTICE :-

This case relates to the income-tax due from the Bank of Mysore for the year 1932-33. The Bank of Mysore is a limited company, registered in the Mysore State, with its head office in the Mysore State, where the whole of the business of the company is controlled and directed. The Bank has one branch in the Civil and Military Station of Bangalore, which for the purpose of this case must be treated as a part of British India. In the year 1932-1933 the Bank made a profit on its transactions within the Mysore State but suffered a large loss on its transactions in the Branch in British India. The Bank claimed to deduct the loss suffered in British India from the profits made in the Mysore State in order to ascertain the income of the year on which they were liable to pay income-tax under the Mysore Income-tax Regulation. The assessing officer and on appeal the Commissioner of Income-tax refused to allow that. At the request of the Bank the Commissioner has referred two questions in this connection to this Court under Section 66 (2) of the Regulation. They are

(1) "whether the losses or deficit sustained in the Branch of the Bank in the Civil and Military Station ought not to be allowed to be set off against the general income of the Bank and treated as

a legitimate deduction in arriving at the assessable profits of the Bank;"

and(2) "whether merely because the profits earned by the Civil and Military Station Branch cannot be assessed in Mysore the losses cannot be allowed to be so set off or deducted in the circumstances of this case.

Section 10 (4) of the Regulation provides: "In computing the profits or gains of a business which has its headquarters in Mysore but has branches also in British India, or which is carried on partly in Mysore and partly in British India, a deduction shall be allowed of the amount of profits or gains appearing to the Assessing Officer to be due to the transactions in British India". The result of that provision is that profits made by the Bank on the transactions in its branch in the Civil and Military Station of Bangalore, i.e. for our present purpose in British India, are excluded from taxation under the Regulation. The Commissioner's view is that, if profits made by the Bank in that branch are excluded from taxation, then losses suffered as the result of the transactions of that branch should be excluded from consideration when computing the profits of the Bank liable for Mysore taxation. His view is that, where the profits are taxable, there and there alone the losses can be deducted. Superficially and verbally that may appear a fair way of looking at the matter. But, when the question is examined, I do not think we can support the Commissioner's view.

Section 10 (4) of the Regulation excludes from taxation in this State profits made in a branch in British India such as the branch of the Bank with which we are dealing. But there is not a word in the Regulation about excluding losses suffered in British India or anywhere else from profits made elsewhere in order to ascertain what is the net profit or income of a business. As a fiscal statute must be interpreted strictly against the State, that might be considered alone to settle the question. The Regulation provides for the taxing of income, profits and gains, and no one's income, profits and gains, if he is a trader carrying on a number of transactions, can be ascertained unless the loss on some transactions, if any, is set off against the profit on others. In the absence of any words in the Regulation providing that some losses should be disregarded all losses must be taken into account.

But, although that would be enough to dispose of this case, perhaps it is worthwhile to go a little further into the reason of the matter. Section 10 (1) of the Regulation provides that the tax shall be payable by an assessee under the head "Business", and it is under the head "Business" that the Bank of Mysore is taxable, in respect of the profits or gains of any business carried on by him. The Bank of Mysore, as I have mentioned, has its headquarters in the Mysore State. Its business is directed and controlled from the Head Office in the Mysore

State. It is in that office that the profits of the whole concern are collected, and from that office they are distributed in the shape of dividends to the shareholders. Under the Regulation, unless there was some special provision, all the profits of the whole concern, wherever earned, when brought into the Head Office in that way would be liable to income-tax under the Regulation. Wherever the profits are earned, they are the profits of the Bank, which has its Head Office in the Mysore State. But it happens that there is a special provision in the Regulation, Section 10(4), which I have read, in regard to profits made by a branch in British India. Because there is that provision, and only because there is that provision, the profits made in the branch in British India, even though received at the Head Office in the Mysore State and distributed from that office in the shape of dividends to shareholders, are exempted from Mysore taxation. That we are informed is a provision introduced in order to prevent the double taxation of such profits. And there is a corresponding arrangement in British India that, if a business has its headquarters in British India and a branch in the Mysore State, then the profits made in the branch in the Mysore State are not taxed in British India to the extent that they are taxable in the Mysore State. That reciprocal arrangement, in order to prevent double taxation of the same profits by the Mysore State and by the British Indian Government, is no doubt a convenient one, though the rates of tax imposed by the two Governments may not be the same. But it will be observed that, when profits are made both by the Bank's

Bank's transactions in the Mysore State and in its branch in British India, there are actual profits of the Bank available both in the Mysore State and in the branch in British India for taxation. That taxation, to which the Bank is liable, is in both cases taxation on actual profits; and that is in consonance with the principle and object of the Income-tax Regulation imposing taxation on income, profits and gains. The dissociation of the profits made in the Mysore State from the profits made in the branch in British India is in no way in conflict with the principle and object of the Regulation. But can it be said that, if we were to dissociate losses suffered in the Mysore State from losses suffered in the branch in British India, as the Commissioner of Income-tax would have us do, that would be in consonance with the principle and object of the Regulation? To my mind it is clear that it would be in conflict with the principle and object of the Regulation. If losses are suffered in any branch of the Bank, wherever situated, the Bank as a whole has to meet those losses. Those losses have to be adjusted in the Head Office of the Bank against profits made elsewhere; and, if they are so great as to absorb the whole of the profits made elsewhere in any particular year, then they must be met from the reserve funds of the Bank as a whole or in the last resort from further contributions to be made by the shareholders, if they have not paid up the whole of their shares. Whenever the losses occur, they are the losses of the Bank, which, as I have said, is directed, controlled and administered in the Mysore State. If we wish to ascertain for any year what are the profits of the

the Bank, we cannot ignore, any more than the shareholders of the Bank can ignore, the losses which may have been suffered in any particular branch. If the losses made in any branch, wherever situated, were ignored in calculating the net profit of the Bank for a year, then the profit would be wrongly calculated. It might happen conceivably that by its transactions within the Mysore State the Bank made a profit in a particular year of half a lakh of rupees, and it might happen that in the same year in a branch in British India the Bank suffered loss of a lakh of rupees. The result would be that the Bank as a whole would have suffered a loss of half a lakh of rupees in that year. But if the method of assessment adopted by the Commissioner of Income-tax were followed, the Bank for that year would be taxed as if it had made a profit of half a lakh of rupees. Now no one can represent that as in consonance with the object of the Regulation, which is that the State should take for its own purposes part of a man's income and not that it should by taxation add to to his loss when he is unfortunate enough not to have any income. I think, not only by a technical interpretation of the Regulation so as to impose no disability on the subject, which is not explicitly set out in the Regulation, but by an examination of its objects and principles we shall see that it is altogether unreasonable to exclude from the calculation of the income of the Bank in the year in question the loss, which they suffered in that one of their branches which is situated in British India.

But it has been urged before us that, apart from any discussion or argument, this case is concluded by a

decision

decision of this Court, i.e. the decision of a Full Bench in Commissioner of Income-tax in Mysore v. Messrs. Manickavelu Mudaliar and Son, 34 Mysore Chief Court Reports 465. The Commissioner in referring this case to us has quoted part of the judgment of Narasimha Iyer C.J. in that case, viz. the words " hile profits or gains of the business, if any, accuring or arising within the Civil and Military Station could not be assessable in Mysore, the loss of that business could not be allowed as a deductible item of expenditure, or as a set off in assessing the firm's income accruing or arising in Mysore." Those words taken out of their context certainly appear to cover this case. But, when we examine that case, I think it can be clearly distinguished from the present case. The quotation which I have read does not include the whole of the sentence in which the words quoted occur. There is one other word in that sentence, and a very important word, if we are to understand the learned Chief Justice's meaning. The word is the very first word of the sentence, which is "thus" and obviously means "in the circumstances previously stated" in the learned Chief Justice's judgment. A decision of a Court of law, if it is to be regarded as an authority in other cases, must be read carefully with regard to the facts of the case in which it is pronounced. In Commissioner of Income-tax in Mysore v. Messrs. Manickavelu Mudaliar and Son a firm was conducting

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a mining business in the Mysore State, in which ~~in the~~ profits were made. The firm also had some transactions in the Civil and Military station of Bangalore in respect of a building called "the Opera House". We have looked into the record of that case, and it appears that the Commissioner of Income-tax, when he referred the case to this Court, expressed the opinion that the firm's transactions in respect of the Opera House in the Civil and Military Station were not a "business" within the meaning of the Income-tax Regulation. But he also said that, if it were a business, then in his opinion it was a totally independent business from the mining business, which the firm was conducting in the Mysore State. The learned Chief Justice, with whom the other learned Judges in the case agreed, clearly adopted the view that the transactions in respect of the Opera House, though amounting to a business, were transactions of a totally independent business from the mining business. He states: "It is conceded by both sides that the loss in question resulted from an adventure of the assessee firm within the limits of the Civil and Military Station of Bangalore, and that the whole of the business ~~connects~~ connected with that adventure was designed to be, and as a matter of fact was, so far as it went, carried on there". Then he goes on: "If profits had accrued in such a business, it would obviously have been subject to taxation under the income-tax law in force in the Civil and Military Station, Bangalore, and the Mysore Revenues would have derived no benefit therefrom". That might be used as an argument in favour of the Commissioner's view urged before us in this case, and an argument to that effect has been maintained by the learned Government Advocate. But the learned

Chief

Chief Justice goes on "See in this connection the case Egyptian Delta Land and Investment Co. V. Todd wherein it was held that where a company incorporated in England or elsewhere the whole of its business to Egypt and did nothing in England beyond its fulfilling its statutory requirements, it was not assessable in England as a company resident in England. Applying the principle of that case, it may be stated that beyond keeping an office and its accounts within the limits of Bangalore City, and the members of the firm also residing there, no part of its business connected with the Opera House was transacted within the City limits. On the other hand, the whole of the said business was to be carried on in the Civil and Military Station". Having set out the facts in this way the learned Chief Justice goes on "Thus" and proceeds with the sentence which I first quoted from his judgment. But the learned Chief Justice obviously regarded the business of the Opera House as an entirely independent business from the mining business. In his view of the facts the whole of the Opera House business was conducted in the Civil and Military Station, and there was nothing beyond keeping an office and accounts within the Mysore State. Unless he had regarded the Opera House business as one entirely managed, controlled, directed and transacted within the Civil and Military Station, it would have been entirely inappropriate for him to quote the case Egyptian Delta Land and Investment Co. V. Todd, on which he relied.

Now

Now it will be seen on investigation of the facts in Commissioner of Income-tax in Mysore v. Messrs. Manickavelu Mudaliar and Son that they are very different indeed from the facts of this case. Here we have no independent business carried on in the branch of the Bank in British India. Whatever is done in that branch is only part of the Bank's ordinary business, and it is controlled and directed, not independently in the Branch in British India, but from the Head Office in the Mysore State. Therefore in my opinion the decision in Commissioner of Income-tax in Mysore v. Messrs. Manickavelu Mudaliar and Son is clearly distinguishable from the present case and is not an authority binding us in the present matter.

In my opinion, unless the losses suffered in the year in question in the branch of the Bank in British India are deducted from the profits made by the Bank in Mysore, the real profits taxable under the Regulation will not be ascertained, and the Bank will be taxed not only on its actual profits but on profits which were never made and existed only in the imagination. In my opinion therefore the first of the two questions referred to us should be answered in the affirmative: the deduction claimed ought to be allowed. It is not necessary to give any answer to the second question.

The

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The Bank of Mysore is entitled to costs in these proceedings. (Advocate's fee Rs.100/-.).

Sd/- H. D. C. Reilly,
CHIEF JUSTICE.

HON. JUSTICE CHARI :-

I agree.

Sd/- [illegible] Chari,
JUDGE.

Amount of costs payable by the Government of Mysore (Commissioner of Income-tax in Mysore) to the Bank of Mysore, Ltd., Bangalore (Assessee) is :-

		Rs. as. ps.
Advocate's fee.	..	100- 0- 0
Copying charges.	..	2- 4- 0
Printing charges.	..	10-14- 0
Total	..	113- 2- 0

Sd/- A. N. Thyagarajan
DEPUTY REGISTRAR.

"Copy"

A. N. Thyagarajan
Deputy Registrar

MV/6

Mr. D. Srinivasa Iyengar, B.A.,
~~Mr. S. HIRIANNAIYA, M.A., B.L.~~
Commissioner of Income-tax
in Mysore.

NEW PUBLIC OFFICES,

Dated, Bangalore, 6th August 1935

C.38/35-36

IMMEDIATE

OFFICE OF THE SECOND MEMBER OF COUNCIL.
6 AUG. 1935
No. 1026

Dear Mr. Rajagopalachari,

The recent decision of the Mysore High Court in case No. 68 (Bank of Mysore Vs. Income-tax Commissioner) has created a difficult situation and calls for urgent action for safeguarding the Revenue.

I am sending up a separate and detailed communication in the matter to the General Secretary to-day. In view of the importance of the question, I wish, however, to bring a few salient points to your kind notice.

The question at issue in that case was, whether out-of-Mysore losses suffered by an assessee could be legitimately claimed to be set off against his taxable income in Mysore for the year.

The view taken by me was, that the Mysore Income-tax Department is concerned with only Mysore profits and Mysore losses and that outside transactions are beyond its purview of or jurisdiction. This seems to be fairly clear from a careful reading of (a) the title and preamble of the Regulation itself, (b) section 4(1), (c) section 6 and (d) section 24(1).

The present judgment of the High Court in supersession (or 'distinguishing') of a Full Bench decision is, that outside losses can be set off against Mysore income. The result of this decision is very unfortunate for the Revenue and the position

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position now is that, while outside profits are not taxed in Mysore, outside losses must be allowed for and set off against the taxable income here, in spite of the fact that the said loss must have been already allowed for in the concerned Provinces of British India. This judgment if allowed to stand will work havoc with our Revenue. It is not easy to calculate the loss to Government by the application of this principle but in any case, it is bound to be immense. Scores of companies like Volkart Brothers, Ralli Brothers, Burma Shell Company, Nobel's Explosives etc. as well as all the Marwari, Multani and other merchants having branches in Madras, Bombay etc. will rush in with their claims to set-off. All their so-called outside losses will be dumped on Mysore (even though they have or must have been allowed for in the place of origin) and the Income-tax Department will have no option, but to allow such claims.

I must here mention an important point which really appears quite to clinch the matter. The provision re set off in our Regulation is, word for word, the same as that in the Indian Income-tax Act. In reply to my enquiry, the Income-tax Commissioners both of Madras and Bombay have stated that section 24 does not authorise the set-off of losses incurred outside British India. Our practice and procedure cannot well differ from that in British India. Mysore losses will not be allowed in British India. British Indian losses should therefore not be allowed in Mysore. A copy of the correspondence is enclosed for your kind perusal.

Dy

In these circumstances, and pending any other suitable action, I propose the immediate issue and publication of a Rule under section 59 of the Income-tax Regulation in the form annexed. I discussed the matter with Mr. Venkat Rangan and I find that there are already many assessees who are alive to and keen to exploit the situation. As this year's assessments fall due almost immediately, urgent action is necessary. I trust that my view will commend itself to Government and that you will order action as proposed above to be taken atonee.

Yours sincerely,

D. Sanjiva Iyengar

Rajamantrapravina
S. P. Rajagopalachari, Esq., B.A., B.L.,
Member of Council,
Bangalore.

No.C-38/35-36. Encl. 1.

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To

The Commissioner of Income-tax:-

(1) Bombay.

(2) Madras.

Dated 15th July 1935.

Sir,

Indian Income-tax Act - Set off of losses.

I have the honour to invite your kind reference to Sections 4, 10 and 24 of the Indian Income-tax Act and to request you to let me know whether, while the income, profits and gains accruing or arising without British India to a person resident in British India are assessable to income-tax in the year in which they are received, there is any provision to set off of losses without British India against the income chargeable to tax.

Sd/- D. Srinivasa Iyengar

REPLIES.

(1) No.Adm.177/35.

From

Khan Bahdur J. B. Vachha, B.A., B.Sc., C.I.E.,
Commissioner of Income-tax,
Bombay Presidency and Aden.

To

The Commissioner of Income-tax in Mysore,
BANGALORE.

Office of the Commissioner of
Income-tax, Bombay Presidency,
5, Wallace Street,
BOMBAY, 29th July 1935.

Sir,

INDIAN INCOMETAX ACT, XI OF 1922 - SECTION 4(2) - LOSSES - SET OFF OF.

Your letter No.C-38 of 15th July 1935.

With reference to your letter quoted above, I have the honour to state that the answer to the question raised therein is in the negative.

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(2) Post Office, G.P.O.
Telephone No.3488.

Office of the Commissioner of Income-tax,
Old High Court Buildings, Madras.

No.616/35.

Dated, the 30th July 1935.

From

E. W. CLARKE, ESQUIRE,
Commissioner of Income-tax, Madras.

To

The Commissioner of Income-tax,
Mysore, Bangalore.

Sir,

Indian Incometax Act - Sections 4, 10 and 24 - Loss incurred outside British India - Set off - Your letter No.C-38/35-36 dated 15th July 1935.

There is no provision in the Indian Income-tax Act to set off losses incurred outside British India in computing the income liable to British Indian assessment.

C O P Y

COMMISSIONER OF INCOME-TAX
IN MYSORE.

mdm.

Enc.2

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Notification No. Dated

In exercise of the powers vested in them under section 59 of the Mysore Income-tax Regulation and in order to clear any possible doubts in the matter, the Government of His Highness the Maharaja of Mysore are pleased to sanction the following Rule viz., Rule 23(a).

Rule 23(a).

In the ascertainment and determination of the income liable to Mysore income-tax of an assessee whose business has its headquarters in Mysore, but has branches also in British India or which is carried on partly in Mysore and partly in British India, the loss to be set off under section 24(1) against his income, profits or gains shall be limited to that appearing to the Assessing Officer to be due to the transactions in Mysore.

"Draft"

6.8.35.

Enclosure to I.T. Commissioner's D.O.
No. C.38/35-36 dated 6th August 1935.

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257.

[illegible]

[illegible]

[illegible]

C.P.No.63/33-34.

23

ORDER.

THE CHIEF JUSTICE:-

This case relates to the income-tax due from the Bank of Mysore for the year 1932-33. The Bank of Mysore is a limited company, registered in the Mysore State, with its head office in the Mysore State, where the whole of the business of the company is controlled and directed. The Bank has one branch in the Civil & Military Station of Bangalore, which for the purpose of this case must be treated as a part of British India. In the year 1932-33 the Bank made a profit on its transactions within the Mysore State but suffered a large loss on its transactions in the Branch in British India. The Bank claimed to deduct the loss suffered in British India from the profits made in the Mysore State in order to ascertain the income of the year on which they were liable to pay income-tax under the Mysore Income-tax Regulation. The assessing officer and on appeal the Commissioner of Income-tax refused to allow that. At the request of the Bank the Commissioner has referred two questions in this connection to this Court under Section 66(2) of the Regulation. They are:-

(1) "whether the losses or deficit sustained in the Branch of the Bank in the Civil & Military Station ought not to be allowed to be set off against the general income of the Bank and treated

as a legitimate deduction in arriving at the assessable profits of the Bank;"

and(2) "whether merely because the profits earned by the Civil and Military Station Branch cannot be assessed in Mysore the losses cannot be allowed to be so set off or deducted in the circumstances of this case."

Section 10(4) of the Regulation provides: "In computing the profits or gains of a business which has its head-quarters in Mysore but has branches also in British India, or which is carried on partly in Mysore and partly in British India, a deduction shall be allowed of the amount of profits or gains appearing to the Assessing Officer to be due to the transactions in British India." The result of that provision is that profits made by the Bank on the transactions in its branch in the Civil & Military Station of Bangalore, i.e., for our present purpose in British India, are excluded from taxation under the Regulation. The Commissioner's view is that, if profits made by the Bank in that branch are excluded from taxation, then losses suffered as the result of the transactions of that branch should be excluded from consideration when computing the profits of the Bank liable for Mysore taxation. His view is that, where the profits are taxable, there and there alone the losses can be deducted. Superficially and verbally that

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Section 10(4) of the Regulation excludes from taxation in this State profits made in a branch in British India such as the branch of the Bank which we are dealing. But there is not a word in the Regulation about excluding losses suffered in British India or anywhere else from profits made elsewhere in order to ascertain what is the net profit or income of a business. No fiscal statute must be interpreted strictly against the State, that might be considered alone to settle the question. The Regulation provides for the taxation of income, profits and gains, and no one's income, profits and gains, if he is a trader carrying on a number of transactions, can be ascertained unless the loss on some transactions if any, is set off against the profit on others. In the absence of any words in the Regulation providing that some losses should be disregarded all losses must be taken into account.

But, although that would be enough to dispose of this case, perhaps it is worthwhile to go a little further into the question of the matter. Section 10(1) of the Regulation provides that the tax shall be payable by an assessee under the head "Business", and it is under the head "Business" that the Bank of Mysore is taxable, in respect of the profits or gains of any business carried on by him. The

The Bank of Mysore, as I have mentioned, has its headquarters in the Mysore State. Its business is directed and controlled from the Head Office in the Mysore State. It is in that office that the profits of the whole concern are collected, and from that office they are distributed in the shape of dividends to the shareholders. Under the Regulation, unless there was some special provision, all the profits of the whole concern, wherever earned, when brought into the Head Office in that way would be liable to income-tax under the Regulation. Wherever the profits are earned, they are the profits of the Bank, which has its Head Office in the Mysore State. But it happens that there is a special provision in the Regulation, Section 10(4), which I have read, in regard to profits made by a branch in British India. Because there is that provision, and only because there is that provision, the profits made in the branch in British India, even though received at the Head Office in the Mysore State and distributed from that office in the shape of dividends to shareholders, are exempted from Mysore taxation. That we are informed is a provision introduced in order to prevent the double taxation of such profits. And there is a corresponding arrangement in British India that, if a business has its headquarters in British India and a branch in the Mysore State, then the profits made in the branch in the Mysore State are not taxed in British India to the extent that they are taxable in the Mysore State. That reciprocal arrangement, in order to prevent double taxation of the same profits by the Mysore State and by the British Indian Government, is no

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To my mind it is clear that it would be in con-
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whole or in the last resort from further contri-

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its

its objects and principles we shall see that it is altogether unreasonable to exclude from the calculation of the income of the Bank in the year in question the loss, which they suffered in that one of their branches which is situated in British India.

But it has been urged before us that, apart from any discussion or argument, this case is concluded by a decision of this Court, i.e., the decision of a Full Bench in Commissioner of Income-tax in Mysore v. Messrs. Manickavelu Mudaliar and Son, 34 Mysore Chief Court Reports 465. The Commissioner in referring this case to us has quoted part of the judgment of Doraswami Iyer, C.J. in that case, viz., the words "While profits or gains of the business, if any, accruing or arising within the Civil & Military Station would not be assessable in Mysore, the loss of that business could not be allowed as a deductible item of expenditure, or as a set off in assessing the firm's income accruing or arising in Mysore." Those words taken out of their context certainly appear to cover this case. But, when we examine that case, I think it can be clearly distinguished from the present case. The quotation which I have read does not include the whole of the sentence in which the words quoted occur. There is one other word in that sentence, and a very important word, if we are to understand the learned Chief Justice's meaning. The word is the very first word of the sentence, which is "Thus" and obviously means "in the circumstances previously stated" in the learned Chief Justice's judgment. A decision of a Court of law, if it is to be regarded as an authority in other cases, must be

read carefully with regard to the facts of the case in which it is pronounced. In Commissioner of Income-tax in Mysore v. Messrs. Manickavalus Mudaliar & Son a firm was conducting a mining business in the Mysore State, in which profits were made. The firm also had some transactions in the Civil & Military Station of Bangalore in respect of a building called "The Opera House. We have looked into the record of that case, and it appears that the Commissioner of Income-tax, when he referred the case to this Court, expressed the opinion that the firm's transactions in respect of the Opera House in the Civil & Military Station were not a "business" within the meaning of the Income-tax Regulation. But he also said that, if it were a business, then in his opinion it was a ~~tacily~~ totally independent business from the mining business, which the firm was conducting in the Mysore State. The learned Chief Justice, with whom the other learned Judges in the case agreed, clearly adopted the view that the transactions in respect of the Opera House, though amounting to a business, were transactions of a tatally independent business from the mining business. He states: "It is conceded by both sides that the loss in question resulted from an adventure of the assessee firm within the limits of the Civil & Military Station of Bangalore, and that the whole of the business connected with that adventure was designed to be, and as a matter of fact was, so far as it went, carried on there." Then he goes on: "If profits had accrued in such a business, it would obviously have been subject to taxation under the income-tax law in force in the Civil & Military Station, Bangalore

Bangalore and the Mysore Government would have derived no benefit therefrom." What might be used as an argument in favour of the Commissioner's view urged before us in this case, and an argument to that effect has been maintained by the learned Government Advocate. But the learned Chief Justice goes on "Nor in this connection the case Lysaght (John) and Incorporated &c., V. Todd, wherein it was held that where a company incorporated in England transferred the whole of its business to Egypt and did nothing in England beyond its fulfilling its statutory requirements it was not assessable in England as a company registered in England. Applying the principle of that case, it may be stated that beyond keeping an office and its accounts within the limits of Bangalore City, and the members of the firm also residing there, no part of its business connected with the Opera House was transacted within the City limits. On the other hand, the whole of the said business was to be carried on in the Civil & Military Station." Having set out the facts in that way the learned Chief Justice goes on "Thus" and proceeds with the sentence which I first quoted from his judgment. How the learned Chief Justice obviously regarded the business of the Opera House as an entirely independent business from the mining business. In his view of the facts the whole of the Opera House business was conducted in the Civil & Military Station, and there was nothing beyond keeping an office and accounts within the City limits. Unless he had

regarded the Opera House business as one entirely managed, controlled, directed and transacted within the Civil & Military Station, it would have been entirely inappropriate for him to quote the case Egyptian Delta Land and Investment Co., V. Todd, on which he relied.

Now it will be seen on investigation of the facts in Commissioner of Income-tax in Mysore V. Messrs. Manickavelu Mudaliar and Son that they are very different indeed from the facts of this case. Here we have no independent business carried on in the branch of the Bank in British India. Whatever is done in that branch is only part of the Bank's ordinary business, and it is controlled and directed, not independently in the branch in the British India, but from the Head Office in the Mysore State. Therefore in my opinion the decision in Commissioner of Income-tax in Mysore V. Messrs. Manickavelu Mudaliar and Son is clearly distinguishable from the present case and is not an authority binding us in the present matter.

In my opinion, unless the losses suffered in the year in question in the branch of the Bank in British India are deducted from the profits made by the Bank in Mysore, the real profits taxable under the Regulation will not be ascertained, and the Bank will be taxed not only on its actual profits but on profits which were never made and existed only in the imagination. In my opinion therefore the first of the two questions referred to us should be answered in the affirmative: the deduction claimed ought to be allowed. It is not necessary to give any answer to

to the account question. The Bank of Mysore is entitled to costs in these proceedings. (Advocate's fee Rs.300/-).

Sd/- E. D. C. Reilly,
CHIEF JUDGE.

Mr. Justice Ellis:-

I agree.

Sd/- A. V. T. Ellis,
JUDGE.

Amount of costs payable by the Government of Mysore (Commissioner of Income-tax in Mysore) to the Bank of Mysore, Ltd., Bangalore (Assessee) is:-

Advocate's fee.	...	Rs. 100- 0- 0
Copying charges.	...	3- 4- 0
Printing charges.	...	10-14- 0
Total.....		Rs. 114- 2- 0

Sd/- A. L. Rajagopala,
Asst. Registrar.

"COPY"

Sd/-
ASSISTANT REGISTRAR
HIGH COURT.

I. T. 68]

In reply refer to
No. C.38/35-36
Encls. 5

OFFICE OF THE COMMISSIONER OF INCOME TAX IN MYSORE,
Bangalore, 6th August 1935.

FINANCIAL
26 SEP. 19
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IMMEDIATE

FROM

D. Srinivasa Iyengar, Esq., B.A.,
THE COMMISSIONER OF INCOME TAX IN MYSORE.

To

H. V. Ramasvami, Esq., M.A., B.L.,
Secretary to the Government
of His Highness the Maharaja of Mysore,
General Department,
Bangalore.

OFFICE OF THE
SECOND MEMBER OF COUNCIL.
7 AUG. 1935
No. 1041-S-1

I have the honour to forward herewith a copy of the Judgment in Civil Petition No. 63 before the High Court - (Bank of Mysore vs. The Incometax Commissioner) together with a printed copy of the proceedings both before me and the Deputy Commissioner of Incometax.

2. The facts set out in these documents speak for themselves. Very briefly, the question at issue in this case was whether outside losses suffered by an assessee can be - set off against his income liable to Mysore Incometax for the year.

3. I have taken the view--in support of the decision of the Deputy Commissioner of Incometax, before whom the case originally came up--that the "loss" mentioned in Section 24 of the Regulation can obviously refer to loss of "profit arising or deemed to arise" in the Mysore State; that, since the Incometax Regulation of Mysore is enacted for the purpose of taxing Mysore profits (in the sense explained in Section 4), the loss which can be claimed to be set off against the profits of any year must also be Mysore loss and not the loss or losses occurring in any branches outside Mysore of a business of which the Headquarters is in Mysore or which is carried on partly in Mysore and partly in British India.

4. The learned Judges of the High Court have now taken the view (after "distinguishing" the Full Bench decision in The Incometax Commissioner vs. Manickavelu Modr.) that, under the Mysore Incometax Regulation, the loss incurred outside Mysore also should be allowed by the Mysore Incometax Department. The result of this decision is very unfortunate for the Revenue; because, under the existing provisions, profits due to transactions in British India outside Mysore are not taxed in Mysore at all; whereas, losses outside Mysore, even - though allowed for and set off in the particular Province of British India where the same have occurred, have to be allowed a second time in Mysore. Thus, the Incometax Department is placed in a rather unenviable position. If this Judgment is allowed to stand, there will be scores of other cases in which the assessees will claim to set off their out-of-Mysore losses against the profits here, inspite of the fact that the relief for the losses has - (or ought to have) already been allowed in the particular places where their branches are located. It is not possible to calculate the resulting loss to Government, but it is - bound to be immense. Big companies like Volkart Bros., - Ralli Bros., Burma-Shell Co., Nobel's Explosives, etc., as well as almost all the Marwari, Multani and other foreign merchants, as also assessees who have branches outside Mysore, will rush in with their claims to set off, and there will be no option but to allow such claims.

5. It is thus imperatively necessary to take steps to get the present Judgment reversed or reviewed. I therefore request that the Government Advocate may kindly be instructed to examine the matter in detail and to get the decision revised or reviewed. Legal consultation with outside lawyers of eminence, like Mr. Bhulabhai Desai and Sir Alladi Krishnasami Iyer, may also be made, if approved by Government, for - deciding upon the steps to be taken. In the last resort, steps

steps should be taken to amend the Regulation by adding a proviso to Section 24(1) in respect of losses, similar to Section 10(4) in respect of profits; or, in the alternative, Section 10(4) may be deleted.

6. In this connection, I should not fail to stress a very important point, which, in my opinion, quite clinches the matter: Section 24(1) of our Regulation is word for word the same as Section 24(1) of the British Indian Income tax Act; but it is noteworthy that, in British India, the Incometax Department do not allow any losses incurred outside British India in computing the income liable to British Indian assessment: in other words, they interpret the "loss" to mean loss incurred in British India and not elsewhere. I made a reference to the Commissioners of Incometax, Madras and Bombay Presidencies, and I herewith enclose copies of the replies sent. Our practice and procedure cannot well be different from that in British India.

7. Amendment of the Regulation is a measure, however, which means delay and as this year's assessments fall due almost immediately, urgent action is necessary to save the Revenue from the consequences of applying the present principle in the general assessment work of the Department. I therefore propose that a Rule may be issued under Section 59 of the Incometax Regulation to make matters clear, and published in the next issue of the Mysore Gazette. I enclose a draft of the Notification for the approval of Government.

I have the honour to be,

Sir,

Your most obedient servant,

D. Srinivasa Iyengar.

DS/SL.
6/8.

COMMISSIONER OF INCOME-TAX.

No.320 30%/.R.
Dated 29th July 1935.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Thursday, the 11th day of July 1935.

PRESENT:-

The Hon. H. D. G. TAIT, C.I.E., I.C.S.,

and

The Hon. Mr. A. S. R. GUPTE.

CIVIL APPLICATION No.63 of 1934-35.

In the matter of a reference under Sec. 66(2) of the Mysore Income-tax Regulation of 1923, made by the Commissioner of Income-tax in Mysore and received with his letter No.S-238/33-34 dated 26th May 1934 forwarding for the decision of this Court a statement of the case relating to the Income-tax due from the Bank of Mysore, Ltd. Bangalore, for the year 1933-34.

Between:-

Mr. A. Venkatasubbaiah, Advocate for the Assessee.

Mr. A. S. Rajagopala Iyer, Government Pleader for Government. (Commissioner of Income-tax).

C.P.No.63/33-34.

O R D E R.

CHIEF JUSTICE:-

This case relates to the income-tax due from the Bank of Mysore for the year 1932-33. The Bank of Mysore is a limited company, registered in the Mysore State, with its head office in the Mysore State, where the whole of the business of the company is controlled and directed. The Bank has one branch in the Civil & Military Station of Bangalore, which for the purpose of this case must be treated as a part of British India. In the year 1932-33 the Bank made a profit on its transactions within the Mysore State but suffered a large loss on its transactions in the Branch in British India. The Bank claimed to deduct the loss suffered in British India from the profits made in the Mysore State in order to ascertain the income of the year on which they were liable to pay Income-tax under the Mysore Income-tax Regulation. The assessing officer and on appeal the Commissioner of Income-tax refused to allow that. At the request of the Bank the Commissioner has referred two questions in this connection to this Court under Section 66(2) of the Regulation. They are:-

(1) "Whether the losses or deficit sustained in the Branch of the Bank in the Civil & Military Station ought not to be allowed to be set off against the general income of the Bank and treated

as a legitimate deduction in arriving at the assessable profits of the Bank;

and(2) "whether merely because the profits earned by the Civil and Military Station Branch cannot be assessed in Mysore the losses cannot be allowed to be so set off or deducted in the circumstances of this case."

Section 10(4) of the Regulation provides: "In computing the profits or gains of a business which has its head-quarters in Mysore but has branches also in British India, or which is carried on partly in Mysore and partly in British India, a deduction shall be allowed of the amount of profits or gains appearing to the Assessing Officer to be due to the transactions in British India." The result of that provision is that profits made by the Bank on the transactions in its branch in the Civil & Military Station of Bangalore, i.e., for our present purpose in British India. are excluded from taxation under the Regulation. The Commissioner's view is that, if profits made by the Bank in that branch are excluded from taxation, then losses suffered as the result of the transactions of that branch should be excluded from consideration when computing the profits of the Bank liable for Mysore taxation. His view is that, where the profits are taxable, there and there alone the losses can be deducted. Superficially and verbally that

may

may appear a fair way of looking at the matter. But, when the question is examined, I do not think we can support the Commissioner's view.

Section 10(4) of the Regulation excludes from taxation in this State profits made in a branch in British India such as the branch of the Bank with which we are dealing. But there is not a word in the Regulation about excluding losses suffered in British India or anywhere else from profits made elsewhere in order to ascertain what is the net profit or income of a business. As a fiscal statute must be interpreted strictly against the State, that might be considered alone to settle the question. The Regulation provides for the taxing of income, profits and gains, and no one's income, profits and gains, if he is a trader carrying on a number of transactions, can be ascertained unless the loss on some transactions if any, is set off against the profit on others. In the absence of any words in the Regulation providing that some losses should be disregarded all losses must be taken into account.

But, although that would be enough to dispose of this case, perhaps it is worthwhile to go a little further into the reason of the matter. Section 10(1) of the Regulation provides that the tax shall be payable by an assessee under the head "Business", and it is under the head "Business" that the Bank of [illegible]sore is taxable, in respect of the profits or gains of any business carried on by him. The

The Bank of Mysore, as I have mentioned, has its headquarters in the Mysore State. Its business is directed and controlled from the Head Office in the Mysore State. It is in that office that the profits of the whole concern are collected, and from that office they are distributed in the shape of dividends to the shareholders. Under the Regulation, unless there was some special provision, all the profits of the whole concern, wherever earned, when brought into the Head Office in that way would be liable to income-tax under the Regulation. Wherever the profits are earned, they are the profits of the Bank, which has its Head Office in the Mysore State. But it happens that there is a special provision in the Regulation, Section 10(4), which I have read, in regard to profits made by a branch in British India. Because there is that provision, and only because there is that provision, the profits made in the branch in British India, even though received at the Head Office in the Mysore State and distributed from that office in the shape of dividends to shareholders, are exempted from Mysore taxation. That we are informed is a provision introduced in order to prevent the double taxation of such profits. And there is a corresponding arrangement in British India that, if a business has its headquarters in British India and a branch in the Mysore State, then the profits made in the branch in the Mysore State are not taxed in British India to the extent that they are taxable in the Mysore State. That reciprocal arrangement, in order to prevent double taxation of the same profits by the Mysore State and by the British Indian Government, is no

doubt

doubt a convenient one, though the rates of tax imposed by the two Governments may not be the same. But it will be observed that, when profits are made both by the Bank's transactions in the Mysore State and in its branch in British India, there are actual profits of the Bank available both in the Mysore State and in the branch in British India for taxation. That taxation, to which the Bank is liable, is in both cases taxation on actual profits; and that is in consonance with the principle and object of the Income-tax Regulation imposing taxation on income, profits and gains. The dissociation of the profits made in the Mysore State from the profits made in the branch in British India is in no way in conflict with the principle and object of the Regulation. But can it be said that, if we were to dissociate losses suffered in the Mysore State from losses suffered in the branch in British India, as the Commissioner of Income-tax would have us do, that would be in consonance with the principle and object of the Regulation? To my mind it is clear that it would be in conflict with the principle and object of the Regulation. If losses are suffered in any branch of the Bank, wherever situated, the Bank as a whole has to meet those losses. Those losses have to be adjusted in the Head Office of the Bank against profits made elsewhere; and, if they are so great as to absorb the whole of the profits made elsewhere in any particular year, then they must be met from the reserve funds of the Bank as a whole or in the last resort from further contri-

butions

contributions to be made by the shareholders, if they have not paid up the whole of their shares. Wherever the losses occur, they are the losses of the Bank, which, as I have said, is directed, controlled and administered in the Mysore State. If we wish to ascertain for any year what are the profits of the Bank, we cannot ignore, any more than the shareholders of the Bank can ignore, the losses which may have been suffered in any particular branch. If the losses made in any branch, wherever situated, were ignored in calculating the net profit of the Bank for a year, then the profit would be wrongly calculated. It might happen conceivably that by its transactions within the Mysore State the Bank made a profit in a particular year of half a lakh of rupees, and it might happen that in the same year in a branch in British India the Bank suffered loss of a lakh of rupees. The result would be that the Bank as a whole would have suffered a loss of half a lakh of rupees in that year. But, if the method of assessment adopted by the Commissioner of Income-tax were followed, the Bank for that year would be taxed as if it had made a profit of half a lakh of rupees. Now no one can represent that as in consonance with the object of the Regulation, which is that the State should take for its own purposes part of a man's income and not that it should by taxation add to his loss when he is unfortunate enough not to have any income. I think, not only by a technical interpretation of the Regulation so as to impose no disability on the subject, which is not explicitly set out in the Regulation, but by an examination of

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its objects and principles we shall see that it is also otherwise unreasonable to exclude from the calculation of the income of the Bank in the year in question the loss, which they suffered in that one of their branches which is situated in British India.

But it has been urged before us that, apart from any discussion or argument, this case is concluded by a decision of this court, i.e., the decision of a full Bench in Commissioner of Income-tax in Mysore v. Kowsen. Manickavelu Mudaliar and Son, 34 Mysore Sub-Court Reports 466. The Commissioner in referring this case to us has quoted part of the judgment of Somasundara Iyer, J.C. in that case, viz., the words "while profits or gains of the business, if any, accruing or arising within the Civil [illegible] in which it is assessable i Mysore, the loss of such business cannot be allowed as a deduction, [illegible] of expenditure, or as a set off [illegible] in the Civil [illegible] income accruing or arising in Mysore." Those words taken out of their context certainly appear to cover this case. But, when we examine that case, I think it can be clearly distinguished from the present case. The question which I have read does not include the whole of the sentence in which the words quoted occur. There is one other word in that sentence, and a very important word, if we are to understand the learned Chief Justice's meaning. The word is the very first word of the sentence, which is "Thus" and obviously means "in the circumstances previously stated" in the learned Chief Justice's judgment. A decision of a Court of law, if it is to be regarded as binding in other cases, must be

read carefully with regard to the facts of the case in which it is pronounced. In Commissioner of Income-tax in Mysore v. Messrs. Manickavalua Mudaliar & Son a firm was conducting a mining business in the Mysore State, in which profits were made. The firm also had some transactions in the Civil & Military Station of Bangalore in respect of a building called "The Opera House." We have looked into the record of that case, and it appears that the Commissioner of Income-tax, when he referred the case to this Court, expressed the opinion that the firm's transactions in respect of the Opera House in the Civil & Military Station were not a "business" within the meaning of the Income-tax Regulation. But he also said that, if it were a business, then in his opinion it was a ~~wholly~~ totally independent business from the mining business, which the firm was conducting in the Mysore State. The learned Chief Justice, with whom the other learned Judges in the case agreed, clearly adopted the view that the transactions in respect of the Opera House, though amounting to a business, were transactions of a tatally independent business from the mining business. He states: "It is conceded by both sides that the loss in question resulted from an adventure of the assessee firm within the limits of the Civil & Military Station of Bangalore, and that the whole of the business connected with that adventure was designed to be, and as a matter of fact was, so far as it went, carried on there." Then he goes on: "If profits had accrued in such a business, it would obviously have been subject to taxation under the income-tax law in force in the Civil & Military Station, Bangalore

Bangalore, and the Mysore revenues would have derived no benefits therefrom." That might be used as an argument in favour of the Commissioner's view urged before us in this case, and an argument to that effect has been maintained by the learned Government Advocate. But the learned Chief Justice goes on "See in this connection the case Egyptian Delta Land and Investment Co., V. Todd, wherein it was held that where a company incorporated in England transferred the whole of its business to Egypt and did nothing in England beyond its fulfilling its statutory requirements, it was not assessable in England as a company resident in England. Applying the principle of that case, it may be stated that beyond keeping an office and its accounts within the limits of Bangalore City, and the members of the firm also residing there, no part of its business connected with the Opera House was transacted within the City limits. On the other hand, the whole of the said business was to be carried on in the Civil & Military Station." Having set out the facts in that way the learned Chief Justice goes on "Thus" and proceeds with the sentence which I first quoted from his judgment. Now the learned Chief Justice obviously regarded the business of the Opera House as an entirely independent business from the mining business. In his view of the facts the whole of the Opera House business was conducted in the Civil & Military Station, and there was nothing beyond keeping an office and accounts within the Mysore State. Unless he had

regarded the Opera House business as one entirely managed, controlled, directed and transacted within the Civil & Military Station, it would have been entirely inappropriate for him to quote the case Egyptian Delta Land and Investment Co., V. Todd, on which he relied.

Now it will be seen on investigation of the facts in Commissioner of Income-tax in Mysore V. Messrs. Manickavelu Mudaliar and Son that they are very different indeed from the facts of this case. Here we have no independent business carried on in the branch of the Bank in British India. Whatever is done in that branch is only part of the Bank's ordinary business, and it is controlled and directed, not independently in the branch in the British India, but from the Head Office in the Mysore State. Therefore in my opinion the decision in Commissioner of Income-tax in Mysore V. Messrs. Manickavelu Mudaliar and Son is clearly distinguishable from the present case and is not an authority binding us in the present matter.

In my opinion, unless the losses suffered in the year in question in the branch of the Bank in British India are deducted from the profits made by the Bank in Mysore, the real profits taxable under the Regulation will not be ascertained, and the Bank will be taxed not only on its actual profits but on profits which were never made and existed only in the imagination. In my opinion therefore the first of the two questions referred to us should be answered in the affirmative: the deduction claimed ought to be allowed. It is not necessary to give any answer to

to the second question. The Bank of Mysore is entitled to costs in these proceedings. (Advocate's fee Rs.100/-).

Sd/- H. D. C. Reilly,
CHIEF JUSTICE.

HR. JUSTICE CHARI:-

I agree.

Sd/- A. S. R. Chari,
JUDGE.

Amount of costs payable by the Government of Mysore (Commissioner of Income-tax in Myser) to the Bank of Mysore, Ltd., Bangalore (Assessee) is:-

Advocate's fee.	...	Rs. 100- 0- 0
Copying charges.	...	2- 4- 0
Printing charges.	...	10-14- 0
Total.....		Rs. 113- 2- 0

Sd/- A. N. Kuppuswami,
DEPUTY REGISTRAR.

"COPY"

COMMISSIONER OF INCOMETAX
IN MYSORE.

mdm.

Enc. 2

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C P. No. 63 of 1933—34

No. C. 288 of 1933—34.

Encl: 6 (2) files and Reference Petition and statement of the case) in triplicate.

OFFICE OF THE COMMISSIONER OF INCOME TAX IN MYSORE.

Bangalore 8th May 1934.

F. 570/G. dated 2nd June 1934.

From,

The Commissioner of Income Tax in Mysore.

To,

The Registrar,
High Court of Mysore,
Bangalore.

Sir,

I have the honour to forward, herewith, the assessment and appeal records for the year 1932—33 of the Bank of Mysore, Limited, Bangalore, together with the Reference Petition in original and the statement of the case along with its Annexures in triplicate for the decision of the Honourable Judges of the High Court under Section 66(2) of the Mysore Income Tax Regulation, 1923,

I have the honour to be,
Sir,
Your most obedient servant,
Sd. A, V. Krishna Murthi,
For Commissioner of Income Tax.

IN THE HIGH COURT OF MYSORE, BANGALORE.

Civil Petition No. 63 of 1933—34.

Case No. C. 288 of 1933—34 stated by the Commissioner of Income Tax in Mysore, Bangalore, for the decision of the High Court of Mysore, under Sec. 66 (2) of the Mysore Income Tax Regulation V of 1923.

The address of the assessee to whom notice is to be given of the reference is: "The Bank of Mysore, Limited, Bangalore, through Mr. B. Vasudeva Murthi, B.A, LL.B., Advocate, Bangalore."

CASE.

I have the honour to state the following case for the decision of the Honourable Judges of the High Court under Section 66(2) of the Mysore Income Tax Regulation, 1923.

The petitioner, the Bank of Mysore, Limited, here in after called "the Bank" is a Joint Stock Company incorporated in Mysore under the Mysore Companies Regulation, 1895

For the assessment of the year 1932—33, the Bank filed a Annexure "A." return of income under Section 22(1) of the Income Tax Regulation on 21st September 1932 showing an income of Rs. 4,128-5-10. Subsequently this return was modified and

Annexure "B." a revised return filed by it on 1st November 1932 under Section 22(3) showing an income of Rs. 14,579-15-8. In the returns of the previous years, the Bank claimed and obtained exemption from taxation of profits earned in the Civil and Military Station Branch. The accounts were called for and examined at the time of assessment under Section 23(2) and it was found that the Bank had deducted from its profits assessable in Mysore a loss of Rs. 72,084-2-8 Annexure "C." alleged to have been sustained by its branch in Civil and Military Station on account of transactions therein. The Special Deputy Commissioner of Income Tax pointed out that this deduction was admissible and that, as the profits of the Civil and Military Station Branch in the past were not being included in the profits of the Bank and assessed to tax in Mysore the loss or deficit in the Branch there should also be not taken cognisance of by the Income Tax Department of Mysore. Annexure "D." He then computed the total income and the incometaxable as under :—

		Rs.	a.	p.
Total Income :—				
Profits as per revised return	....	14,579	15	8
Add : C. and M. Station deficit		72,084	2	8
Interest from securities (taxed and tax free) to be deducted for assessment	...	97,693	9	1
Total	....	1,84,357	11	5
Taxable Income :—				
Total Income	...	1,84,357	11	5
Deduct interest from securities....		97,693	9	1
Net Income	...	86,664	2	4

From the Special Deputy Commissioner's order of assessment, the Bank appealed to me under Section 30 of the Regulation I. agreed with Special Deputy Commissioner of Income Tax in the view expressed by him, viz., that when the profits in Civil and Military Station Branch were not taxable in Mysore, the loss incurred therein should also be ignored and I dismissed the appeal in my Annexure "E." order dated 8th February 1934.

The Bank now requires me to state a case and refer for the decision of the High Court the following questions:—

"(1) Whether the losses or deficit sustained in the Branch of the Bank in the Civil and Military Station ought not be allowed to be set off against the general income of the Bank and treated as a legitimate deduction in arriving at the assessable profits of the Bank.

(2) Whether merely because the profits earned by the Civil and Military Station Branch cannot be assessed in Mysore, the losses cannot be allowed to be so set off or deducted in the circumstances of this case.

(3) Whether the loss sustained by the Branch do not represent the working expenses and interest paid on the borrowed capital by the Bank through its Branch and therefore are not to be allowed as a deductible item.

(4) Whether Branch office in the Civil and Military Station is not in substance a channel through which the Head office of the Bank raises capital by paying interest through the same channel and whether the loss sustained by the Branch is not in reality such excess interest paid by the Head office on such borrowed capital."

Questions 3 and 4 formulated by the Bank seem to me points not of law but of fact. The questions propounded for the decision of the High Court are whether the Bank is not borrowing capital through its Branch in Civil and Military Station and whether the loss sustained by the Branch is not in reality such excess interest paid by the Head office on such borrowed capital. It is not clear to me in what sense these are questions of law.

The decision of the High Court is therefore respectfully invited on questions 1 and 2 only.

COMMISSIONER'S OPINION.

In my opinion, neither of these points are well taken. It is to be noted that under section 4, the Income-tax Regulation applies to all income, profits or gains as described or comprised under section 6, from whatsoever source derived, accruing or arising or received in Mysore or deemed under the provisions of this Regulation to accrue, or arise, or to be received in Mysore.

Under section 10(4) of the same Regulation, "in computing the profits or gains of a business which has its head-quarters in Mysore but has branches also in British India, or which is carried on partly in Mysore and partly in British India, a deduction shall be allowed of the amount of profits or gains appearing to the assessing officer to be due to the transactions in British India." In other words, section 10 (4) indicates that profits due to transactions in British India (and outside Mysore) should not be taxed here. Obviously, the object of this is to avoid double taxation.

Thus, in the case of companies working both in Mysore and British India profits arising outside Mysore jurisdiction are left alone bythe Regulation, it is therefore reasonable to expect that losses arising outside Mysore should be similarly ignored or left out of account by the Mysore Income-tax Department. To say that outside profits should not be taxed here, but outside losses should be allowed for and permitted to be set off against income does not seem to be consistent or fair.

As regards losses and any set off that can be claimed for the same, the section applicable is 24. The section enacts that where any assessee sustains a

loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year.

Now taking the Income-tax Regulation as a whole, and reading its provisions carefully, it seems to me that all its provisions whether in respect of profit or loss, as the case may be, are to be taken as applicable to incomes which are amenable to the jurisdiction of Mysore Income-tax Law. It seems to me a forced interpretation to hold that the loss referred to in section 24 of the Income-tax regulation includes loss alleged to be sustained by the British Indian branches of a busines whose head quarters is located in Mysore. The loss (just as the profit) must be in Mysore; otherwise, it would follow that loss sustained in branches situated, say in places like Salem or Coimbatore, would have to be allowed for by the Mysore Income-tax authorities.

I may refer here to the opinion expressed by the Full Bench of the Chief Court in C. R. C. No. 2 of 28-29, in which the Judges have made among other things, the following observations.—

"While profits or gains of the business, if any, accruing or arising within the C'vil and Military Station would not be assessable in Mysore, the loss of that business could not be allowed as a deductible item of expenditure, or as a set off in assessing the firm's income accruing or arising in Mysore.....If profits had occrued in such a business, it would obviously have been subject to taxation under the Income-tax Law in force in the Civil and Military Station, Bangalore, and the Mysore revenues would have derived no benefit therefrom."

It seems to me that both common sense and law plainly indicate that while profits earned out side of Mysore remain not assessable to Mysore Income tax, assessees should not be allowed to claim set off of outside loss either. If the profits or gains of the business, if any, accruing or arising within the Civil and Military Station, are not assessable to Mysore Income tax, it follows as a corollary that the loss incurred by any such business in the Civil and Military Station Branch should also not be recognised by the Mysore Income tax Department. I would therefore answer both these questions in the negative.

Sd. D. Srinivasa Iyengar,
Commissioner of Incometax.

Bangalore,
1st May 1934.

ANNEXURE "A"

I. T. 6]

FORM 6.

Please invariably quote this number in all your communications,

Section 22 (1) and Rule 18.

File No. 1-C.B. 1/32-33.

Notice—Income-tax Year 1932-33.

Office of the Special Deputy Commissioner of Income-Tax.
Bangalore,
Dated 1—7—1932

To
The Manager,
The Bank of Mysore, Ltd.,
Post Box 37, Bangalore.

In accordance with sub-clause (12) of Section 2 of the Mysore Income Tax Regulation, 1923, I intend to treat you as the principal officer of the Bank of Mysore, Ltd., and invite your attention to the provisions of Section 22 of the said Regulation in accordance with which you are required to prepare and to furnish to the Income-Tax Officer a return of the total income of the above Bank during the year ended 30—6 - 1932 on or before the 15th September 1932 in the following form :—

Sd. S. Venkatarangam,
Income-Tax Officer.
Special Deputy Commissioner,
of Income-Tax,
Bangalore.

Forms of return of total income of Companies under Section 22(1) of the Mysore Income-Tax Regulation, 1923, (to be accompanied by a copy of the Profit and Loss Statement) (Rule 18).

Income, Profits or Gains from Business, Trade, or Commerce.

	Rs.	a.	p.
Income, profits or gains as per profit and loss account for the year ended 1932 June 1930.	4,31,489	7	11
Add any amount debited in the accounts in respect of—			
1. Reserve for bad debts			
2. Sums carried to reserve for provident or other funds			
3. Expenditure of the nature of charity or presents ...			
4. Expenditure of the nature of capital ...			
5. Income-tax or Super-tax ...			
6. Rental value of property owned and occupied ...	1,76,979	2	2
7. Cost of additions to or alterations, extensions, improvements of any of the assets of the business.			
8. Interest on reserve or other Funds			
9. Losses sustained in former years			
10. Losses recoverable under an insurance or contract of indemnity ...			
11. Depreciation of any of the assets of the business			
12. Expenses not incurred solely for the purpose of earning the profits ...			
Total ...	6,0,468	10	1
Deduct—Any profits included in the accounts already charged to Mysore Income-tax and the interest on securities of the Government of Mysore declared to be income-tax free etc. ...	6,04,340	4	3
Balance as per Separate statement attached herewith (Rs. 4,128-5-10).	4,128	5	10

If the Company owns and any property not occupied for the purposes of the business, a statement in (1)see page 3 the form prescribed in (1) Schedule A hereto

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should be attached with particulars of the credit and debit on account of such property entered in the accounts.

DECLARATION

I, the Manager, (Secretary, etc., see Section 2 (12) of the Regulation of the Bank of Mysore Limited, (name of Company), declare the information against each head in this return is correctly given as shown in the books of the Company as also in the accounts which have been duly audited by the auditors of the Company and which have been adopted by the shareholders of the Company.

for THE BANK OF MYSORE, LTD.,

Bangalore City.
Date 21st Sept. 1932

Sd, T. M. S. Subramaniam,
Ag. Manager.

ENCLOSURE TO ANNEXURE "A."

Profits of the Bank of Mysore Limited, Adjusted for the Purpose of Income-Tax (Year 1932-33) For the Period from 1st July 1931 to 30th June 1932.

Particulars				Amount. Rs.	A.	P.
Profits of the Bank for the year ending 30th June 1932				4,31,489	7	11
Add						
Bank's contribution to Provident Fund	Rs.	a.	p.			
	....	6,784	15	6		
Depreciation on Bank Premises and buildings	....	11,270	2	6		
Depreciation on Furniture and Fittings	....	4,909	6	11		
Expenditure of the nature of Capital	....	2,778	11	3		
Income Tax and Super Tax	....	30,451	11	7		
Rental value of Bank Premises	....	8,000	0	0		
Reserve for doubtful debts	....	1,11,955	3	8		
Repairs to Bank Premises	....	328	14	9		
Subscription to the Indian Institute of Bankers	...	500	0	0	Rs. 1,76,979	2	2
					6,08,468	10	1
Less—							
Bad Debts written off	...	2,13,318	0	6			
Depreciation on Bank Premises and buildings at 2½% per annum on Rs. 4,51,892-7-5	....	11,897	4	0			
Depreciation on Furniture and fittings at 5 p. c. per annum on Rs. 98,256-11-11	....	4,912	12	0			
Foreign Income	...	16,863	13	11			
Interest on Government of India Securities	...	2,58,338	2	1			
Interest on Government of Mysore securities		91,997	12	1			

Interest on miscellaneou securities viz., 4 per cent Kolar District Board Debentures, Bangalore Chikballapur Light Railway Shares, 5 per cent Chitaldrug, Chikjajur railway debentures, 5 per cent Shimoga District railway debentures, 5½ p.c. Gorur Hemavathy Bridge debentures, 6 per cent Chitaldrug Town Water Supply debentures, 6 per cent Tumkur Town water supply debentures and 7 p. c. Nanjangood, Chamarajanagar Railway debentures	... 5,695 13 0		
One-sixth of annual rental value for repairs	... 1,333 5 4		
Rental value of rent free quarters for Manager for 7 months at Rs. 1,000 per annum (on home leave	.... 583 5 4		
		6,04,340 4 3	
Net Balance	..... Rs.	4,128 5 10	

For the Bank of Mysore, Ltd..
Sd. T. M. S. Subramaniam,
Ag. Manager.

Bangalore City,
21st September, 1932

ANNEXURE "B"

I. T. 6]

FORM 6.

Please invariably quote this number in all your communications,

Section 22 (1) and Rule 18.

File No.

Notice—Income-tax Year 193 —193 .

Income-Tax Offce,

Dated.....193 .

To

The Manager,
The Bank of Mysore, Ltd.,
Bangalore City.

In accordance with sub-clause (12) of Section 2 of the Mysore Income Tax Regulation, 1923, I intend to treat you as the principal officer of the Bank of Mysore, Ltd., and invite your attention to the provisions of Section 22 of the said Regulation in accordance with which you are required to prepare and to furnish to the Income-Tax Officer a return of the total income of the Bank of Mysore, Limited. during the year ended 30—6—1932 on or before the 15th September 1932 in the following form :—

Income-Tax Officer.

Forms of return of total income of Companies under Section 22(1) of the Mysore Income-Tax Regulation, 1923, (to be accompanied by a copy of the Profit and Loss Statement) (Rule 18).

Income-Tax Year 193 —193

Name of Company ... ...

Its principal place of business ....

Income, Profits or Gains from Business, Trade, or Commerce.

		Rs.	a.	p.
Income, profits or gains as per profit and loss account for the year ended 30th June 1932.	....	4,31,489	7	11
Add any amount debited in the accounts in respect of—				
1. Reserve for bad debts	.....			
2. Sums carried to reserve for provident or other funds	.....			
3. Expenditure of the nature of charity or presents	...			
4. Expenditure of the nature of capital	...			
5. Income-tax or Super-tax	...			
6. Rental value of property owned and occupied	...			
7. Cost of additions to or alterations, extensions, improvements of any of the assets of the business.				
8. Interest on reserve or other Funds	....			
9. Losses sustained in former years	....			
10. Losses recoverable under an insurance or contract of indemnity	...			
11. Depreciation of any of the assets of the business	.....			
12. Expenses not incurred solely for the purpose of earning the profits as per statement	...	168,650	3	5
Total	—	600,139	11	4
Deduct—Any profits included in the accounts already charged to Mysore Income-tax and the interest on securities of the Government of Mysore declared to be income-tax free etc., as per statement	....	58,5,559	11	8
Balance as per statement attached	.....	14,579	15	8

If the Company owns any property not occupied for the purposes of the business, a statement in (1)see page 3 the form prescribed in (1) Schedule A hereto should be attached with particulars of the credit and debit on account of such property entered in the accounts.

DECLARATION

I, the Manager, (Secretary, etc., see Section 2 (12) of the Regulation of the Bank, of Mysore Limited, (name of Company), declare that the information against each head in this return is correctly given as shown in the books of the Company as also in the accounts which have been duly audited by the auditors of the Company and which have been adopted by the shareholders of the Company.

for The Bank of Mysore, Ltd.,

Sd, P. W. O'Brien.

Signature.....

Designation—Manager.

Bangalore City.

Date 1st, November 1932.

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ENCLOSURE TO ANNEXURE "B."

Profits of the Bank of Mysore Limited, Adjusted for the Purpose of Income-Tax (Year 1932-33) For the Period from 1st July 1931 to 30th June 1932.

Particulars			Amount. Rs. A. p.
Profits of the Bank for the year ending 30th June 1932		....	4,31,489 7 11
Add—			
Bank's contribution to Provident Fund	Rs. a. p. 6,784 15 6		
Depreciation on Bank Premises and buildings	.... 11,270 2 6		
Depreciation on Furniture and Fittings	.... 4,909 6 11		
Expenditure of the nature of Capital	.... 2,778 11 3		
Income Tax and Super Tax	.... 30,451 11 7		
Reserve for doubtful debts	... 1,11,955 3 8		
Subscription to the Indian Institute of Bankers	... 500 0 0		
			1,68,650 3 5
			6,00,139 11 4
Less—			
Bad Debts written off	... 2,13,318 0 6		
Depreciation on Bank Premises and buildings at 2½% per annum on Rs. 4,51,892-7-5	.... 11,297 4 0		
Depreciation on Furniture and fittings at 5 p. c. per annum on Rs. 98,256-11-11	.... 4,912 12 0		
Interest on Government of India Securities	... 2,58,338 2 1		
Interest on Government of Mysore securities	... 91,997 12 1		
Interest on miscellaneou securities viz., 4 per cent Kolar District Board Debentures, Bangalore Chikballapur Light Railway Shares, 5 per cent Chitaldrug, Chikjajur railway debentures, 5 per cent Shimoga District railway debentures, 5½ p.c. Gorur Hemavathy Bridge debentures, 6 per cent Chitaldrug Town Water Supply debentures, 6 per cent Tumkur Town water supply debentures and 7 p. c. Nanjangood, Chamarajanagar Railway debentures	... 5,695 13 0		
			5,85,559 11 8
Net Balance		..... Rs.	14,579 15 8

For the Bank of Mysore, Ltd.,
Sd. P. W. O'Brien
Manager.

Bangalore City,
1st November 1932

ANNEXURE "C."

NOTE.

The Bank of Mysore declared an income of Rs. 4,128-5-10 in its return filed on 22—9—32. It has now sent in a revised return, according to which the income of the Bank is Rs. 14,579-15-8.

On a comparison of the two returns, it is found that the following modification has been effected in regard to the 1st return :—

					Rs.	a.	p.
Income				....	4,128	5	10
Add foreign income which had not been shown as income				....	16,863	13	11
					20,992	3	9
Deduct—							
The value of the Bank premises :—							
Total value	...	8,000	0	0			
Less repairs thereof	....	1,333	5	4			
		6,666	10	8			
Less the value of rent free quarters for the Manager for 7 months at Rs. 1000 p. m. (on Home Leave)		583	5	4	6,083	5	4
					14,908	14	5
Deduct repairs to building				....	328	14	9
				Net	14,579	15	8

The Bank has not modified the return in so far as the C. & M. Station deficit of Rs. 72,084-2-8 is concerned. The return has to be adjusted now by adding back this deficit as it is inadmissible as a deduction. Kind reference is invited to the Judge's remarks in Civil Referred Case No. 2 of 1928-29 in re: Messrs. V. Manickavelu Mudaliar & Son which run as follows :—

While profits or gains of the business, if any, accruing or arising within the Civil and Military Station would not be assessable in Mysore, the loss of that business could not be allowed as a deductible item of expenditure, or as a set off in assessing the firm's income accruing or arising in Mysore.

Mr. T. M. S. Subramanyam contended on behalf of the Bank that the transactions in C. & M. Station do not amount to the carrying on of any business and the deficit representing the excess of expenditure over income should not be construed as a loss. He further added that the transactions in C. & M. Station Branch were confined to the mere acceptance of deposits. In other words the Bank opened a branch in C. & M. Station, according to him only for raising capital. This is an argument which cannot be entertained for purposes of Income tax assessment. There is no legal bar and disqualification operating on the Bank in the matter of advancing loans to constituents in C. & M. Station. A reference to the assessment files of the Bank for the years prior to 1931-32 shows clearly that the Bank was returning profits alleged to have accrued in C. & M. Station and

claiming deduction therefor under Sec. 10 (4). In all those years, the claim has been admitted and the amount of such profits excluded in assessment. When a loss has been shown, such a loss cannot be admitted as a set off at all.

Further under Sec. 13. income, profits and gains have to be computed on the basis of the method of accounting employed by the assessee. The method of accounting adopted shows that the working of the Bank's branch in C. & M. Station resulted in a deficit i.e., loss. As per law, as pointed out, the loss cannot be admitted as a deduction.

Net assessable income for Incometax will therefore be as under:—

Returned	....	14 579	15	8.
Add Deficit	...	72,084	2	8.
Total	.	86,664	2	4.

Total income may be computed adding back the interest of Mysore, Government Securities etc., declared to be I. T. free as also the interest taxed at source.

24—11-32. (Intd). A. V. K.

ANNEXURE "D."

Income Tax Assessment 1932—33.

(File No. 1—C. B. I. of 1931—32) File No. 1—C. B. I. of 1932—33.

Name and Address of the Assessee:—

The Bank of Mysore, Limited,
Post Box 37, Bangalore.

Order under Section 23(3), I. T. R.

The Representation of the Bank of Mysore was heard, and the following order of assessment is passed. It was pointed out to him, that as we do not tax the profit earned in the Civil and Military Station, we do not take into consideration the loss or deficit in the Branch there. It was also clearly explained to him tha there was no evidence to show that the Branch was only for raising capital for the Head Office. On the other hand, the available evidence shows, that the Branch is also doing business in the Civil and Military Station just as the Head Office in the State; that the Branch earned profit in several previous years. We do not tax the profit earned in the Civil and Military Station; hence we cannot allow any deduction for the loss there.

The income of the Bank in the year ending 30th June 1932 is determined as hereunder:—

		Rs.	a.	p.
Profit as per revised return	....	14,579	15	8
I have to add back to this the following inadmissible item:—				
(a) C. and M. Station deficit	...	72,084	2	8
Also (b) Interest from Securities, Debentures, etc. (Taxed and tax free) to determine the total income	...	97,693	9	1
Total Income is thus	....	1,84,357	11	5

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Excluding item (b) above, the income chargeable to Income tax is ...	86,864	2	4
Income tax thereon at 18 pies in the rupee	8,124	12	0
Super tax on 1,54,357 Rs. at 12 pies in the rupee ...	9,647	5	0
Total demand ...	17,772	1	0

Issue a notice of demand accordingly.

Sd. S. Venkatrangam,
Spl. Dy. Commr. of Incometax.

Bangalore, 25—11—32.

ANNEXURE "E."

IN THE COURT OF THE COMMISSIONER OF INCOME TAX IN MYSORE.

Bangalore, dated 8th February 1934.

Present:—D. Sreenivasa Iyengar, Esq., B.A.,

Commissioner of Income Tax in Mysore.

Appeal petition No. 22 of 1932—33 presented by the Bank of Mysore, Limited, Bangalore, against the order of assessment made for the year 1932—33 by the Special Deputy Commissioner of Income Tax, Bangalore.

Heard:—Mr. B. Vasudeva Murthy, B,A., LL.B., Advocate for the appellant.

ORDER.

Under Section 31, Mysore Income Tax Regulation

This is an appeal by the Bank of Mysore, Limited, against the order of assessment passed by the Special Deputy Commissioner of Income Tax, Bangalore, assessing them on an income of Rs. 1,84,357-11-5. The only important contention in this case relates to the question of the deficit or loss alleged to have been sustained in the Branch of the Bank at the Civil and Military Station. The counsel for the appellant urges that this should be treated as a legitimate deduction and should be allowed to be set off against the general income of the Bank.

2. I have examined the matter with care but I am unable to accede to this contention. The position, very briefly put, is that while profits or gains of the business, if any, accruing or arising within the Civil and Military Station would not be accessable in Mysore, the loss of that business could not be allowed as a deductible item of expenditure or as a set off in assessing the income accruing or arising in Mysore. The Bank themselves have contended in the past that profits earned by the Civil and Military Station Branch should not be assessed here. I hold that any loss that may be incurred by a Branch situated out of the jurisdiction of the Mysore Income Tax Department, such as the Civil and Military Station of Bangalore or, for the matter of that, any place in British India cannot be allowed to influence the assessment of the Head Office of the Bank in Mysore. In this view, I accept the finding of the Special Deputy Commissioner of Income Tax that the so-called loss or deficit in the Civil and Military Station of Bangalore cannot be allowed to be treated as a deductible item. This appeal is dismissed.

Sd. D. Sreenivasa Iyengar,
Commissioner of Income-Tax.

BEFORE THE COMMISSIONER OF INCOME TAX IN MYSORE, BANGALORE.

Application No. of 1933-34.

I. A. No. 22 of 1932-33.

Petitioner :—The Bank of Mysore, Ltd., Avenue Road, Bangalore City, by its Manager, Mr. P. W. O. 'Brien.

Under Section 66 (2) of the Mysore Income-Tax Regulation, the petitioner begs to state as follows :—

1. The petitioner filed an appeal before this Court in Appeal No. 22 of 1932-33 against the assessment by the Deputy Commissioner of Income-Tax, Bangalore, on the petitioner's income for the year 1932-33 ending 30th June 1932. The said appeal was dismissed on 8th February 1934 and the same was communicated to the petitioner on 10th February 1934.

2. The petitioner prays that in view of the facts, viz ;—

i. that the Head Office and principal place of business of the petitioner bank is incorporated and is situate in the Mysore State,

ii. that the Branch in the Civil and Military Station is entirely subordinate to and merely an auxiliary of the Head Office,

iii. that the management, guiding and control of the Branch as well as of the Head Office is entirely vested in the Head Office of the Bank within the state,

iv. that the accounts are finally collected and made up, balance sheets prepared and issued and the profits declared and distributed to the share holders by the Head Office only,

v. that the directors meet and guide the workings of the Bank including all its Branches (including the Civil and Military Station Branch in the Head Office within the Mysore State,

vi. that the rule as to taxing the profits earned in the Civil and Military Station is merely one of convenience to prevent double taxation of the profits or income of the same person both within the state and in the Civil and Military Station,

vii. that such separate assessment (as referred to in para (vi) of income tax on the profits is in no way inconsistent with the allowing of deduction for the losses arising in the Branch of the Civil and Military Station out of the actual total income of the Bank as such and is in fact the only reasonable and logical mode of arriving at its actual assessable income of the person or company paying the tax,

viii. that a refusal to allow such a set off or deduction for losses would virtually amount to double taxation of the income of the Bank or taxing it on imaginary profits,

ix. that the Bank has been actually out of Pocket to the extent of these losses and could not either in law or in equity be called upon to pay income-tax on its profits without being given a deduction for these loses.

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X. that there is nothing in principle or in law to prevent such a set off being allowed in the case of the Head office, in computing its real income or profits, as the deficit in the Civil and Military Station Branch really represents and is directly traceable to the working expenses of the Branch and the interest paid by the Bank through the Branch on capital borrowed through the latter (as per its statement of profit and loss account for the year ending 30th June 1932), which in its turn was placed at the disposal of the Head Office,

XI that by the refusal to allow this loss as a deduction, the Department has really refused to allow as a deductible item interest paid on the borrowings of the Head Office through its Branches which is a perfectly legitimate deductible item of expenditure incurred in the course of the banking business and actually allowed in favour of the Bank in C. P. No 58 of 1931—32 on the file of the High Court of Mysore.

The following questions of law that arise out of the said order, be referred to the High Court for decision :—

1. whether the losses or deficit sustained in the Branch of the Bank in the Civil and Military Station ought not be allowed to be set off against the general income of the Bank and treated as a legitimate deduction in arriving at the assessable profits of the Bank.

2. Whether merely because the profits earned by the Civil and Military Station Branch cannot be assessed in Mysore, the losses cannot be allowed to be so set off or deducted, in the circumstances of this case.

3, Whether the losses sustained by the branch do not represent the working expenses and interest paid on the borrowed capital by the Bank through its Branch and therefore, are not to be allowed as a deductible item.

4. Whether the Branch office in the Civil and Military Station is not in substance a channel through which the Head office of the Bank raises capital by paying interest through the same chanel and whether the loss sustained by the Branch is not in reality such excess interest paid by the Head office on such borrowed capital.

III. A Treasury challan for Rs. 100 is enclosed herewith.

For the Bank of Mysore Ltd.

Sd. ———not clear.

Manager.

Petitioner.

Sd. B. Vasudevamurthy,

Advocate for Petitiouner

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IN THE HIGH COURT OF MYSORE

C. P. No. 63 of 1933-34

(Assessee—The Bank of Mysore Ltd., Bangalore.)

By Mr. B. Vasudevamurthy.

Vs.

(Assessor—The Commissioner of Income-tax in Mysore, Bangalore).

By The Government Advocate.

Presented:—

In the Court of the Deputy Commissioner of Income-Tax Bangalore. File No. 1—C. B. 1	Order passed on 25—11—32
In the Court of the Commissioner of Income-Tax in Mysore. Appeal Petition No. 22 of 1932-33	Order passed on 8—2—34

In the Chief Court—Reference received on

Nature of claim – Income-Tax

To be heard on.....193 .

Caxton . Press, Bangalore City—1934

Encls. 3 + 4 -

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No.C-38/35-36.

To

The Commissioner of Income-tax:-

(1) Bombay.

(2) Madras.

Dated 15th July 1935.

Sir,

Indian Income-tax Act - Set off of losses.

I have the honour to invite your kind reference to Sections 4, 10 and 24 of the Indian Income-tax Act and to request you to let me know whether, while the income, profits and gains accruing or arising without British India to a person resident in British India are assessable to income-tax in the year in which they are received, there is any provision to set off of losses without British India against the income chargeable to tax.

Sd/- D. Srrinivasa Iyengar

REPLIES:-

(1) No.Adm.177/35.

From

Khan Bahdur J. B. Vachha, B.A., B.Sc., C.I.E.,
Commissioner of Income-tax,
Bombay Presidency and Aden.

To

The Commissioner of Income-tax in Mysore,
BANGALORE.

Office of the Commissioner of
Income-tax, Bombay Presidency,
5, Wallace Street,
BOMBAY, 29th July 1935.

Sir,

INDIAN INCOMETAX ACT, XI OF 1922 - SECTION 4(2) -
LOSSES - SET OFF OF.

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H+E

Your letter No.C-38 of 15th July 1935.

With reference to your letter quoted above, I have the honour to state that the answer to the question raised therein is in the negative.

---

(2) Post Office, G.P.O.
Telephone No.3488.

No.616/35.

Office of the Commissioner of Income-tax,
Old High Court Buildings, Madras.

Dated, the 30th July 1935.

From

E. W. CLARKE, ESQUIRE,
Commissioner of Income-tax, Madras.

To

The Commissioner of Income-tax,
Mysore, Bangalore.

Sir,

Indian Incometax Act - Sections 4, 10 and 24 - Loss incurred outside British India - Set off - Your letter No.C-38/35-36 dated 15th July 1935.

There is no provision in the Indian Income-tax Act to set off losses incurred outside British India in computing the income liable to British Indian assessment.

" C O P Y "

D

COMMISSIONER OF INCOME-TAX
IN MYSORE.

mdm.

IMMEDIATE

Office of the Commissioner of
Income-tax in Mysore,

C.38/35-36
Enc.1

Bangalore, dated 6th August 1935.

SUBMITTED:-

Adverting to my interview re: the recent decision of the High Court in the Mysore Bank Case (No.63), I am sending up a separate communication as to the action urgently called for in order to safe-guard the Government Revenue. On the same date on which I got a copy of the High Court's Judgment, I got the replies of the Income-tax Commissioners of Bombay and Madras as regards British Indian practice. They both state that outside losses are not allowed to be set off and that there is no provision in the Income-tax Act to do so. A copy of the correspondence is enclosed as it will repay perusal.

2. This year's assessments are fast approaching. If the present Judgment, reversing, as it does, the previous Full Bench decision of Mr. Doraiswamy Iyer's time, is allowed to stand, it will work havoc with our Income-tax Revenue. It is not easy to calculate the loss to Government by the application of this principle, but in any case it is bound to be immense. Scores of companies like Volkart Brothers, Rally Brothers, Burma Shell Company, Nobel's Explosives, etc., as well as all the Marwari, Multani and other merchants having branches

in Madras, Bombay, etc., will rush in with their claim to set off. All their so-called outside losses will be dumped on Mysore (even though they have or must have been allowed for in the place of origin), and the Income-tax Department will have no option but to allow such claims.

3. I have therefore proposed to the Second Member the immediate issue of a Rule under Section 59 of the Regulation in order to clear the matter and to save this year's assessments from the danger threatened by the application of the new principle.

4. I have also suggested other legal action and, as a last resort, the amendment of the Income-tax Regulation itself; but these measures mean delay. Immediate publication of a Rule under the Regulation seems to be an inexorable necessity to safe-guard the Revenue.

D. Srinivasa Iyengar.

COMMISSIONER OF INCOME-TAX

DEWAN).

Encl. 1.

No.C-38/35-36. 69

To

The Commissioner of Income-tax:-

(1) Bombay.

(2) Madras.

Dated 15th July 1935.

Sir,

Indian Income-tax Act - Set off of losses.

I have the honour to invite your kind reference to Sections 4, 10 and 24 of the Indian Income-tax Act and to request you to let me know whether, while the income, profits and gains accruing or arising without British India to a person resident in British India are assessable to income-tax in the year in which they are received, there is any provision to set off of losses without British India against the income chargeable to tax.

Sd/- D. Srinivasa Iyengar

REPLIES.

(1) No.Adm.177/35.

From

Khan Bahdur J. B. Vachha, B.A., B.Sc., C.I.E.,
Commissioner of Income-tax,
Bombay Presidency and Aden.

To

The Commissioner of Income-tax in Mysore,
BANGALORE.

Office of the Commissioner of
Income-tax, Bombay Presidency,
5, Wallace Street,
BOMBAY, 29th July 1935.

Sir,

INDIAN INCOMETAX ACT, XI OF 1922 - SECTION 4(2) - LOSSES - SET OFF OF.

Your letter No.C-38 of 15th July 1935.

With reference to your letter quoted above, I have the honour to state that the answer to the question raised therein is in the negative.

---

(2) Post Office, G.P.O.
Telephone No.3488.

No.616/35.

Office of the Commissioner of Income-tax,
Old High Court Buildings, Madras.

Dated, the 30th July 1935.

From

E. W. CLARKE, ESQUIRE,
Commissioner of Income-tax, Madras.

To

The Commissioner of Income-tax,
Mysore, Bangalore.

Sir,

Indian Incometax Act - Sections 4, 10 and 24 - Loss incurred outside British India - Set off - Your letter No. C-38/35-36 dated 15th July 1935.

There is no provision in the Indian Income-tax Act to set off losses incurred outside British India in computing the income liable to British Indian assessment.

"C O P Y"

COMMISSIONER OF INCOME-TAX
IN MYSORE.

mdm.

Sec. 1/ F.S. Sec: Secret (3 linked files)

73

17th August 1935.

Dear Sir,

As desired in your letter of yesterday I am directed to send herewith the files relating to the High Court's judgment in the recent Income-tax case in which the Bank of Mysore was concerned

I am,
Yours sincerely,

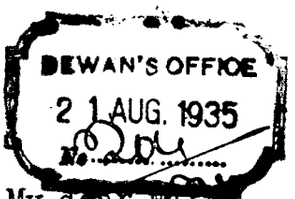
Secretary 17.8.35

17/8.

Sir Charles Todhunter, K.C.S.I.,
Private Secretary to His Highness
the Maharaja of Mysore.

D.O.no. 36/1 file

74



Vasantha Mahal,

Mysore, 20th August 1935.

My dear Mirza,

I am returning the papers relating to the Mysore Bank's income-tax case at once, without delaying them to secure and study the Act and textbooks, as I find that some immediate action has been proposed in regard to the matter.

The case is one of the very difficult ones that arise out of the question of double taxation, which has occupied the attention of several eminent Committees of the League of Nations. I have not been in touch with these discussions of late, but from what I recollect of them, the discussion has always been with reference to the proportion of the total income attributable to residence and origin, respectively. I don't think an attempt has ever been made to treat the business conducted in one country as a single unit without regard to that in others. The nature of the transactions in many cases would make such an attempt impracticable.

In the present case, as the papers show, this basis of treatment leads in either case to a reductio ad absurdum. If a firm had branches under two or three administrations and was allowed to set off all the losses against the profits under each, while the Income Tax authorities were not allowed to accumulate the profits, then the same losses would be written off several times over. On the other hand, if profits were taxed by the administrations under which a profit took place and the losses under administrations where there were no profits were not allowed to be written off at all, then the firm would be taxed on far more than it had earned.

I don't think either of these procedures is followed in the case of a firm that has its headquarters in Madras and a branch in Mysore, such, for instance, as Messrs. Binny and Company. Speaking subject to correction, I understand that in such a case the Commissioner of Income-Tax in Madras taxes the whole of the profits of the firm in Madras, Mysore and elsewhere at the Government of India rate; Mysore taxes the net profits according to the Mysore rate; and Madras refunds the amount of Mysore tax by deduction.

It seems to me that this would be a fair enough procedure in the case of the Bank of Mysore. Mysore would tax the bank on the whole of its profits wherever earned at the rate applicable to its total income, and if it made an income in Madras, Madras would tax that, and Mysore would refund to the Bank a portion of the tax collected proportionate to the amount of the Madras income.

The legal basis of this arrangement is, I understand, that the whole income of the firm "arises" where its head office is (except in cases when there is no regular business done there such as the Egyptian case quoted) and that the net income of a branch also 'arises' at the place where the branch is situated.

The adoption of such an arrangement would, I presume, involve a repeal of Section 10(4). I think you would find it worth while to have the history of that section traced. I think that it may be found that it dates back to a period before the mutual arrangements for avoidance of double income tax were invented. Now that they are in force, this separate provision for avoidance of double income tax is superfluous.

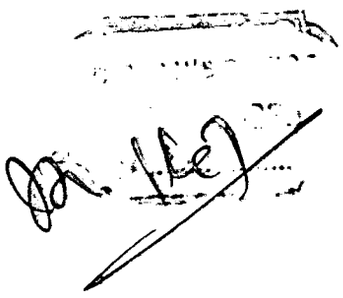
Yours sincerely,

G Subramaniam

No.C.38/35-36

Office of the Commissioner of Income-tax
in Mysore,
Bangalore, dated 8th August 1935.

In continuation of my note No. C.38/35-36 dated the 6th instant, regarding the decision of the High Court of Mysore in the Mysore Bank case, I beg to state that the Mysore Bank has applied for a refund of Rs 11,476-4-0 as a result of that decision to the Special Deputy Commissioner of Income-tax. That officer points out that if the amount is not paid immediately the department will have to pay interest on the amount. Hence I have asked him to issue the refund cheque.



As a large sum is involved and as the case for the Government is a strong one, I request that, as urged by me already, steps may be taken to have the judgment reviewed and the principle of the Full Bench decision of Mr. Doraswami Iyer's time restored.

I am preparing a memo of the grounds for a review application with the kind assistance of the Special Deputy Commissioner and will forward the same shortly to the General Secretary.

D. Srinivasa Iyengar
Commissioner of Income-tax.

The Dewan of Mysore)

Mr. D. Srinivasa Iyengar, B.A.,
Commissioner of Income-tax
in Mysore.

77

NEW PUBLIC OFFICES,

No.C.38/35-36

Dated, Bangalore, 8th August *193* 5.

Dear Sir,

In continuation of my D.O. No. C.38/35-36 dated the 6th instant, regarding the decision of the High Court of Mysore in the Mysore Bank case, I beg to state that the Mysore Bank has applied for a refund of Rs 11,476-4-0 as a result of that decision to the Special Deputy Commissioner of Income-tax. That Officer points out that if the amount is not paid immediately, the department will have to pay interest on the amount. Hence I have asked him to issue the refund cheque.

As a large sum is involved and as the case for the Government is a strong one, I request that, as urged by me already, steps may be taken to have the judgment reviewed and the principle of the Full Bench decision of Mr. Doraswami Iyer's time restored.

I am preparing a memo of the grounds for a review application with the kind assistance of the Special Deputy Commissioner and will forward the same shortly to the General Secretary.

Yours sincerely,

D Srinivasa Iyengar

Rajamantrapravina
S. P. Rajagopalachari, Esq., B.A., B.L.,
Member of Council,
Bangalore.

r.D.Srinivasa Iyengar, B.A.,
~~MR.S.HIRANNAIYA,M.A.,B.L.~~
Commissioner of Income-tax
in Mysore.

NEW PUBLIC OFFICES,

Dated, Bangalore.....12th August 193 5.

D.O.No. C.38/35-36.
Encs. Two.

IMMEDIATE

Dear Mr. Ramasvami,

In continuation of my letter No. C. 38/35-36 - dated 6th August 1935 , regarding the recent case of the Mysore Bank vs. Incometax Commissioner, decided by the High Court, I beg to enclose a Memo of the grounds on - which a Review Application may be prepared as also a few - Notes upon certain portions of the High Court's judgment.

2. I am afraid that there is a certain amount of repetition in the above Notes, but they are only intended to help in the preparation of a Review Application and will, no doubt, be recast into the proper legal shape.

Yours sincerely,

D. Srinivasa Iyengar.

H. V. Ramasvami, Esq., M.A., B.L.,
Secretary to the Government
of His Highness the Maharaja of Mysore,
General Department,
Bangalore.

Submit
Continuation
The file is with the Member
II Member

12.8.35

The learned Judges ought to have held that, under Section 4(1), it is only Mysore income, profits or gai that can be taxed under the Mysore Incometax Regulation. Consequently, when Section 24 talks of "loss of profits or gains", what is meant is loss of Mysore profits or gains and not outside losses.

Income, profits or gains arising outside Mysore ar taxed in the particular locality concerned and under the Law in force there: the Mysore Incometax Regulation does not apply to such cases at all.

Outside profits and gains of businesses, only if actually brought into or received in Mysore within three years of their arising, will be subject to Mysore Incometax.

Under Section 24, the loss of profits or gains under any head of Section 6 can be set off against the assessee's income and profits from any other head during the same year.

The learned Judges ought to have held that this being so, the following is the proper interpretation to place upon the language of the Regulation:-

Suppose that (A) represents the gross Mysore income the Bank and (a) the loss suffered in Mysore; (B) the total income in the C. & M. Station Branch and (b) the loss suffered therein. Then the effect of the above is that the Head Office in Mysore would be liable to Mysore Incometax under the Incometax Regulation on (A - a) and the Branch in the C. & M. Station to British Indian Incometax under the Indian Incometax Act on (B - b). In other words, the losses in the area under each Administration would be set-off against and deducted from the profits therein and only the net profits taxed. It would therefore be quite unreasonable to hold that the net taxable income

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it can only be (A - a). (b) cannot be deducted twice, - once in C. & M. Station and a second time in Mysore.

The Mysore Incometax Department can no more be called upon to give deduction for British Indian losses than the British Indian Incometax Department can be asked to give deduction for Mysore losses.

It is only when both the Head Office and all the Branches are under one Administration, viz., Mysore Government and, taxed under one Law, viz., Mysore Incometax Regulation, that this pooling arrangement can be made, viz., all the profits of all the Branches added together and all the losses in all the Branches set off against the same, in order to arrive at the net taxable income in Mysore. But when different Administrations are involved, the income in each area must be computed and taxed separately, according to the rates applicable to each locality (which also, it should be remembered, vary in many respects).

The learned Judges ought to have held that, in the absence of any express words in the Regulation, the term "loss" in Section 24 can refer only to loss of Mysore profits and gains and not the loss outside Mysore, whether in British India or in foreign countries. The Mysore Incometax Regulation's jurisdiction is confined to Mysore; and outside transactions and businesses cannot come within its purview (except to the extent mentioned in Section 4(2)).

The learned Judges ought to have held that, for the same reason that there is "dissociation" of the profits made in Mysore from the profits made in British India, the losses suffered in Mysore should also be "dissociated" from the losses in British India; that the net taxable income

area should be calculated from tl gross profits in each minus the loss suffered in each, separately. The l rned Judges have considered the "conceivable" case of profit of half a lakh of rupees in the Mysore State and a lo of a lakh of rupees in the C. & M. Station. The contrary - case is equally conceivable, viz., a loss of half a lakh i Mysore and a profit of one lakh in the C. & M. Station; i such a case, would the Bank consent to pool the losses and profits of different areas and to have itself charged on a income of half a lakh of rupees under the Mysore Incometax Regulation?

It is thus altogether unreasonable to include in the calculation of the Mysore income of the Bank, losses - suffered in a Branch outside of Mysore, in British India.

The learned Judges ought to have held that, under the Mysore Incometax Regulation, we are not concerned with the total income of the Bank as a whole, or all over the world, but only with its Mysore income. For the ascertainment of the latter, the gross income of Mysore minus the loss in Mysore would give the net Mysore taxable income. Losses suffered elsewhere must be claimed elsewhere and cannot be shifted on to Mysore.

The reason given for "distinguishing" V. Manickavelu Mudaliar's case is not sound, viz., that, in that case, the businesses or ventures of the Firm in question were different or independent, whereas in the Bank's case, the businesses are related. There is a clear finding in that Full Bench decision that outside losses cannot be claimed in Mysore. It is quite beside the point ~~that~~ whether the business in Mysore and the business in the C. & M. Station are one and the same or independent. A set-off can

Section 24 for any loss

under any other head, even though there are 20 different and independent businesses. The only condition is that both the profit and the loss should be such as could come under the purview of the Mysore Incometax Regulation and relate to transactions in Mysore.

The omission of the word "thus" in the Incometax Commissioner's reference to the High Court neither perverts the meaning of the Full Bench decision nor takes anything out of its context; because, it is seen from the above - that if a set-off is claimable at all, it would be so irrespective of the businesses being the same or independent.

Last but not least the learned Judges ought to have paid regard to the interpretation placed on Section 24 and the practice prevailing in British India. The wording of Section 24 of the Incometax Act is word for word the same that of Section 24 of the Mysore Incometax Regulation. The learned Judges ought not to have ignored the fact that, in none of the Provinces of British India, losses outside British India are allowed to be set-off against British India profits. Under exactly the same provision of law, there cannot well be a different interpretation or procedure in Mysore State.

For these reasons, it is prayed that the decision given by the Judges may be reviewed and the Full Bench decision given in Manickavelu Modr. **vs.** Incometax Commr. may be restored.

D. Srinivasa Iyer

12th August 1935. COMMISSIONER OF INCOME TAX

DS/SI

[illegible] POINTS IN THE HIGH COURT JUDGMENT.

Reference to Page of Judgment (in copy sent to Government).

Page 3.

"... there is not a word in the Regulation about excluding losses suffered in British India or anywhere else from profits made elsewhere in order to ascertain what is the net profit or income of a business."

The only right interpretation to place upon the word 'losses' is losses suffered in Mysore. That is clear from the very title and preamble etc., as to the scope of the Income-tax Regulation. It is against all right canons of interpretation to hold that the losses mentioned in section 24 can include losses suffered in British India and (consequently) even in foreign countries. (Section 10(4) about which much has been said excludes from Mysore taxation the profits in British India because the Regulation wants to confer a special privilege upon British Indian profits as distinguished from other out-of-Mysore profits. See section 4(2) under which all profits of business brought into or received in Mysore (within of course a time limit) are to be deemed to be Mysore profits and taxed as such. So section 10(4) is simply designed to make an exception in favour of British Indian profits).

Page 3.

"In the absence of any words in the Regulation providing that some losses should be disregarded all losses ought to be taken into account".

This interpretation logically leads to the result that we should allow all losses not merely in British India but even in foreign countries where a business might sometimes have branches, such as Java or Japan. On the contrary the Judges ought to have held that, in the absence of any express words to that effect, "loss of profits" in Section 24 means "loss of profits or gains" as defined in Section 4(1), i.e., loss of profits accruing, arising or received in Mysore" i.e., liable to Mysore Income-tax under the Regulation

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Page 4. "All the profits of the whole concern, wherever earned when brought into the Head Office in that way would be liable to incometax under the Regulation".

Not unless there is an actual "bringing into or receiving in Mysore" within 3 years. Merely because a figure appears in the Balance Sheet or accounts, the amount which it represents cannot be taken as a receipt or bringing into Mysore. A "constructive" or account-book receipt is not actual receipt.

Page 4. "That (Section 10(4)) we are informed is a provision introduced in order to prevent the double taxation of such profits."

Precisely; by parity of reasoning, a double set-off of losses also should be disallowed.

Page 5. "When profits are made both by the Bank's transactions in the Mysore State and in its branch in British India, there are actual profits of the Bank available both in the Mysore State and in the branch in British India for taxation."

Quite so and no one disputes it. But note that each State or Administration taxes the actual profits earned within its jurisdiction and cannot touch profits outside and cannot recognise losses outside its limits.

Page 5. "If losses are suffered in any branch of the Bank, wherever situated, the Bank as a whole has to meet those losses."

We (i.e., the Mysore Incometax Department) are not concerned with the "Bank as a whole" but only with the Bank's Mysore Income. Further, if losses are suffered in any Branch in British India, nothing prevents the Bank's Branch from proving the said loss and getting it set-off against its income in the particular locality by the particular administration concerned. A claim to set off in Mysore would amount to taking the application to the wrong quarters and, in any case, would really be a claim to deduct the loss twice.

B

Page 6.

"If we wish to ascertain for any year what are the profits of the Bank, we cannot ignore, any more than the shareholders of the Bank can ignore, the losses which have been suffered in any particular branch."

The shareholders dwell both in British India and Mysore. They may be interested in "the Bank as a whole". But what the Income-tax Department is concerned with is not the profits of the Bank all over the world "as a whole", but the profits arising in Mysore and due to Mysore transactions. For the ascertainment of this, the losses suffered in outside branches are irrelevant. If there have been profits in Mysore, they will be taxed in Mysore. If there are profits in British India, they will be taxed in British India. If there should be losses in either of the areas, the same will be set off against the profits in the respective areas, but the gross total loss cannot be set off against the profits in any one locality; it would really amount to allowing the loss twice.

Page 6.

"It might happen conceivably that by its transactions within the Mysore State the Bank made a profit in a particular year of half a lakh of rupees, and it might happen that in the same year in a branch in British India, the Bank suffered loss of a lakh of rupees. The result would be that the Bank as a whole would have suffered a loss of half a lakh of rupees in that year."

But take the contrary case: it might also happen that there was a loss of half a lakh of rupees in the Mysore State and a profit of one lakh of rupees in British India: would the Bank in these circumstances allow itself to be taxed in Mysore, because, "the result would be that the Bank as a whole would have made a profit of half a lakh of rupees in that year"? Or, would it, on the other hand, claim that the Mysore transactions ended in a loss and that the Mysore Income should be declared as below taxable minimum? The crux of the matter really is that the Bank's transactions under two different Administrations cannot be clubbed together but must be treated separately or "dissociated".

A

46

Page 7. "It is altogether unreasonable to exclude from the calculation of the income of the Bank in the year in question the loss, which they suffered in that one of their branches which is situated in British India."

Our concern is not with the income of the Bank as a whole, but only its Mysore income. For ascertaining this latter, the exclusion of the losses suffered in Branches in British India far from being unreasonable is just the very thing that should be done. Otherwise, according to the argument adopted by the High Court, losses suffered anywhere (not merely in British India) would have to be allowed for in Mysore. Any losses sustained in British India (or elsewhere) can and ought to be claimed in the place of occurrence against the profits there and they cannot well be deducted from the profits earned in Mysore a second time.

Page 8. "The transactions in respect of the Opera House (in Manickavelu Mudaliar's case) though amounting to a business were transactions of a totally independent business from the Mining business."

The arguments advanced to "distinguish" the case of Manickavelu Mudaliar are not sound or convincing. Under section 24, it does not matter at all whether the businesses are the same or different or independent. Any loss under any of the heads mentioned in Section 6 can be set off against any profits under any of the other heads. Even if there were 20 different and independent businesses, the losses under some can be set off against the profits in others, provided both the losses and profits arise in Mysore.

Page 7. "The quotation which I have read does not include the whole of the sentence in which the words quoted occur. There is one other word in that sentence and a very important word, like we are to understand the learned Chief Justices' meaning. The word is the very first word of the sentence, which is "thus", and obviously means .. in the circumstances previously stated" in the learned Chief Justice's Judgment."

The omission of the word 'thus' does not in any way tear out of the context anything of importance,

because

because, as stated above, it is altogether immaterial whether the C. & M. Station business and the City business are different or the same. If a set-off can be claimed at all, it can be claimed irrespective of the fact whether the businesses are one and the same or different (Section 24).

Page 9. "It was held that where a Company incorporated in England transferred the whole of its business to Egypt and did nothing in England beyond its fulfilling its statutory requirements it was not assessable in England as a Company resident in England."

In that case, the profits were not brought into or received in England but were earned and kept or spent outside the United Kingdom. This has really nothing to do with Section 24 or section 4(2) under which outside profits will be charged only when brought into or received in the taxing country within the period mentioned therein.

Page 1[illegible] "Here we have no independent business carried on in the Branch of the Bank in British India."

It is altogether beside the point whether the business carried on in the Branch in British India is independent business or the same business. If the set off is claimable at all, it would be so irrespective of the businesses being the same or independent (Section 24) for the loss of one can be set off against the income or profits of the other.

Page 10. "Unless the losses suffered in the year in question in the Branch of the Bank in British India are deducted the real profits taxable under the Regulation will not be ascertained."

The losses suffered in British India, it should not be forgotten, have already been deducted from the profits made in British India. To bring those losses once again into the accounts, so as to diminish the income taxable in Mysore, is unjustifiable. "The real profits taxable under the

D

the Regulation" are the Mysore profits and not the [redacted] income of the Bank.

66

D Srinivasa Iyengar

12th August 1935. COMMISSIONER OF INCOME TAX.

DS/ SL.

Subd in continuation

T (Number)

Ltr 13/8/35

The course suggested by Government Advocate.	The proposed amendment agreed to.	Amendment proposed by the Under Secretary.
The only way in which the situation could be got over is by amending Section 10 by providing in effect that such losses as those in question shall not be set off against profits or gains in Mysore.	Substitute semi-colon for full-stop after "British India" and add "provided that losses appearing to the assessing officer to be due to the transactions in British India shall not be allowed to be set off against the profits or gains accrued or earned in Mysore"	In place of sub-section 4 of Section 10 substitute "In computing the profits or gains of a business which has its headquarters in Mysore but has branches also outside Mysore or which is carried on partly in Mysore and partly outside Mysore, no deduction shall be allowed if the amount of loss appearing to the assessing officer to be due to transactions ~~xxxxxx~~ outside Mysore.

Enc.5

90

Notification No. Dated

In exercise of the powers vested in them under section 59 of the Mysore Income-tax Regulation and in order to clear any possible doubts in the matter, the Government of His Highness the Maharaja of Mysore are pleased to sanction the following Rule viz., Rule 23(a).

Rule 23(a).

In the ascertainment and determination of the income liable to Mysore income-tax of an assessee whose business has its headquarters in Mysore, but has branches also in British India or which is carried on partly in Mysore and partly in British India, the loss to be set off under section 24(1) against his income, profits or gains shall be limited to that appearing to the Assessing Officer to be due to the transactions in Mysore.

"Draft"

A Bill further to amend the Mysore Income-Tax Regulation, V of 1923.

Whereas it is expedient further to amend the Mysore Income-Tax Regulation, 1923; It is hereby enacted as follows:-

Amendment of Sub Sec.(4) of Sec.10.

At the end of sub ~~xxxxxx~~ section (4) of section 10 of the said Regulation the following words shall be added:-

" and no deduction shall be allowed of the amount of loss appearing to such officer to be due to ~~such~~ The transactions outside Mysore."

Statement of Objects & Reasons.

Under Section 10(4) of the Mysore Income-Tax Regulation, a deduction is allowable of the amount of profits or gains earned by business transactions in British India in computing the income assessable to Mysore income-tax. The losses resulting from such transactions were not being allowed to be set off against the profits earned in Mysore, ~~and this is not justifiable and involves loss to the Government.~~ But the High Court of Mysore have held in a recent decision (C.P.63 of 33-34) that ~~such losses have to be set off against~~ losses arising outside Mysore to be deducted from profits or gains in Mysore made in computing the income assessable to Tax.

92

and that there is nothing in the Regulation providing that such losses should be disregarded. This ~~dictum~~ view decision is ~~understood to be against the practice in British India and involves loss of revenue to the Govern-~~ ment. ~~The Bill is intended to remedy this~~ ~~defect.~~

would highly approve a practice which has been long in vogue and which has been considered to be in conformity with the spirit of the Income Tax arrangements in Mysore. The bill is intended to remove doubts as to the validity of this practice.

30/11/35

Ce

Well

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No. 2105—L. C. Bangalore, dated 5th December 1935.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Mysore Income-Tax Regulation, V of 1923, is published for general information with the statement of objects and reasons.

By Order,
C. SUBRAHMANYA AIYAR,
Secretary,
Mysore Legislative Council.

A Bill further to amend the Mysore Income-Tax Regulation, V of 1923.

Whereas it is expedient further to amend the Mysore Income-Tax Regulation, 1923; It is hereby enacted as follows :—

Amendment of Sub-Sec. (4) of Sec. 10

At the end of sub-section (4) of section 10 of the said Regulation the following words shall be added :—

"and no deduction shall be allowed of the amount of loss appearing to such officer to be due to the transactions outside Mysore."

STATEMENT OF OBJECTS AND REASONS.

Under Section 10 (4) of the Mysore Income-Tax Regulation, a deduction is allowable of the amount of profits or gains earned by business transactions in British India in computing the income assessable to Mysore Income-Tax. The losses resulting from such transactions were not being allowed to be set off against the profits earned in Mysore. But the High Court of Mysore have held in a recent decision (C. P 63 of 1933-34) that losses suffered outside Mysore have to be deducted from profits or gains made in Mysore while computing the income assessable to tax and that there is nothing in the Regulation providing that such losses should be disregarded. This decision would disturb a practice which has been long followed and which has been understood to be in conformity with the spirit of the income-tax arrangements in Mysore. The bill is intended to remove doubts as to the validity of this practice.

Printed by the Superintendent at the Government Press, Bangalore.

G. R. S. VI.—s-III/14]

DRAFT.

SUBJECT.....

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.....

Section. Legis
File No. 61-35
Serial No. 1

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,
( )
, *the*.....191 .

Date of issue.....10/1/36

Signed by.....

Proceedings of the Government of H. H. the Maharaja of Mysore.

Order No. P4476. Leg 1

Ordered that the accompanying 12 Regulations for levies to be made in the Mysore Income tax Regn. 1935, which received the assent of His Highness the Maharaja, on the 27th day of December 1935, be published as Regulation No. XI of 1935, in the *Mysore Gazette* for general information.

Secretary to Government.

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

To

The Compiler, *Mysore Gazette*, for publication in Part III of the Gazette, in English and Kannada and for supply of —spare copies in English, and —spare copies in Kannada as per standing orders ~~to this office, and .....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore.~~ Proofs should be sent to this office for approval before publication.

copy to Translation Section

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

95

Read:-

Order No. P4476/ Legis 61-35-1 &41

Dated, Bangalore, the 9th January 1936.

To

Ordered that the accompanying Regulation further to amend the Mysore Income tax Regulation, 1923, which received the assent of His Highness the Maharaja, on the 27th day of December 1935, be published as Regulation No. XI of 1935, in the Mysore Gazette for general information.

for General Secretary to Government.

To

The Compiler, Mysore Gazette, for publication in Part III of the Gazette, in English and Kannada and for supply of spare copies in English and spare copies in Kannada as per standing orders. Proofs should be sent to this Office for approval before publication.

C.R.G.4

NOTIFICATION.

Order No. P. 1476—Legis. 61-35-1, dated Bangalore, the 9—10th January 1936.

Ordered that the accompanying Regulation further to amend the Mysore Income-tax Regulation, 1923, which received the assent of His Highness the Maharaja, on the 27th day of December 1935, be published as Regulation No. XI of 1935, in the *Mysore Gazette* for general information.

M. VENKATESA IYENGAR,
Secretary to Government,
General Department.

REGULATION XI OF 1935.

(*Received the assent of His Highness the Maharaja on the 27th day of December 1935.*)

A Regulation further to amend the Mysore Income-tax Regulation V of 1923.

Whereas it is expedient further to amend the Mysore Income-tax Regulation, 1923; It is hereby enacted as follows:—

Amendment of Sub-Sec. (4) of Sec. 10.

At the end of sub-section (4) of Section 10 of the said Regulation, the following words shall be added :—

"and no deduction shall be allowed of the amount of loss appearing to such officer to be due to the transactions outside Mysore."

MIRZA M. ISMAIL,
Dewan.

Price 0-0-3